

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of Request by the TETRA Association For Waiver of Sections 90.209, 90.210 and 2.1043 of the Commission's Rules Public Notice DA-09-2633A1 Released December 24, 2009	ET Docket No. 09-234
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**Initial Comments
Initial Opposition
to the TETRA Association Waiver Request
Including
Request For Designation of Undersigned Entities as Parties
And
Request for Placement on Public Notice and for Investigation**

Initial Comments and Previous Submission

The following text was filed by the undersigned parties with the FCC Secretary on or about December 14, 2009: it had essentially the same caption as the above except with no reference to the Public Notice and the ET Docket noted above ("Previous Submission"). On December 24, 2009 the FCC released DA-09-2633A1 establishing ET Docket No. 09-234 and a pleading cycle for Comments and Reply Comments regarding the above-captioned Request or petition (The "TA Petition"). This Previous Submission is hereby submitted again on ECFS by the same undersigned parties: this time as Initial Comments in that docket 09-234.^[*]

The undersigned parties intend to submit additional Comments within the pleading cycle.

^[*] By this second submission, the undersigned parties do not waive any rights they may have under FCC rules and procedures and other applicable law with regard to the Previous Submission.

However, they believe that it is useful to submit this Previous Submission again, on ECFS, at this time at the start of the pleading cycle for the following reasons: DA 09-2633A1 *did not indicate* that the Previous Submission was filed and accepted as filed by the Secretary and presented relevant information on the TA Petition and was available on the ET docket created, ET Docket No. 09-234, which thus this relevant information from being considered by interested parties in this docket. Due especially to the nature of this relevant information, the undersigned parties believe that was not in the public interest of developing a full, fair and timely record and decision. Thus, the undersigned parties submit this pleading at this time so that that interested entities (and not only those shown on the Certificate of Service below, which applies, as it states, to the Previous Submission) can consider the information in this text and respond thereto, if they choose, in Comments rather than replies to Comments. That will develop a more full record on the subject matter, and is appropriate given the factual situation described below in which the subject TETRA Association request or petition was submitted and is being pursued. Also, that situation and the TA Petition do not merely involve technical issues that the Office of Engineering may consider and decide upon.

Previous Submission

The Previous Submission, defined above, is the following text: the rest of this pleading.

The undersigned parties share interest in TETRA equipment for their FCC licenses nationwide and aspects of their coordinated business plans and philanthropy in PMR (Private Mobile Radio) for smart transportation, energy and environment (the “Skybridge Parties”).^{1 2}

¹ These Skybridge Parties are known to the FCC staff that deal with PMR licensing and issues, as shown in their licenses on ULS and their pleadings in various rulemaking, licensing, and other proceedings. Their involvement in TETRA for their FCC licenses and in support of TETRA for the US PMR market is also well known and has also been presented to the FCC including in person in the M-LMS docket 06-49, and in proceedings involving AMTS Auctions. This involvement is presented to the general PMR and wider markets, for example, at www.tetra-us.us. This involvement also involved the complaint to ESTI that lead to its years-long

They hereby submit an initial opposition to the “Request” or petition captioned above of the TETRA Association (“TA”) (the “TA Petition”). *This pleading, with the TA Petition attached, is available by entering in Google “opposition tetra petition.”*

investigation of Motorola’s refusal to license its US patents for TETRA in violation of ETSI IPR Policy, as reported in part in the website listed above, on the page “ETSI Allenged...” Reasons that the TA ignores these involvements is indicated herein. The ETSI IPR Policy is discussed by ETSI here: http://www.etsi.eu/WebSite/document/Legal/ETSI_Guide_on_IPRs.pdf.

² These coordinated plans are partially described in their FCC pleadings including in the proceedings noted in footnote 1, and online publications such as those listed in Exhibit 1 hereto.

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(i) Summary

The Tetra Association (again, the TA) lacks standing to submit the TA Petition. The Request is unripe and its grant would be futile. The TA lacks candor in and submits a false premises as foundation for the Request, and misleading, incomplete and conclusory statements in support. The Petition is thus defective procedurally and subject to dismissal. However, the Skybridge Parties suggest that the FCC place the TA Petition on Public Notice and also conduct an inquiry into matters raised in or by the Petition. They also request that the FCC designate them as parties to any proceeding based on the TA Petition.

This filing is submitted under a Declaration under penalty of perjury, to support the facts alleged. The website www.tetra-us.us, a website of the Skybridge Parties, has not been updated for most of this year and thus does not reflect some facts and issues presented herein.

1. Initial Opposition Explanation

The Skybridge Parties asked the TA on December 14, 2009 by email³ to provide to the FCC (in the matter of this TA Petition) and copy the Skybridge Parties certain facts essential to threshold and other matters of the TA Petition (the “Matters”) that the TA and some persons related to the TA informed the Skybridge Parties were held by the TA but not yet provided to the FCC in this captioned matter, or to publicly the US PMR markets generally, or to the Skybridge Parties.

These facts, the Skybridge Parties have been informed by the TA and TA related parties, relate to said threshold Matters including any reliable or even speculative evidence contrary to the publicly disclosed fact that Motorola holds *US* patents essential for TETRA (“Motorola TETRA Patents”) and takes the position that no one can obtain any license therefore on any basis

³ Copies of this request to the TA, as identified to the TA, were sent to with copies to some of its members that have publicly expressed interest in providing TETRA to the US, and parties dealing with TETRA for US purposes within the European Technical Standards Institute, also known as ETSI.

(whether it is on voluntary basis such as under the ETSI standard of “fair reasonably and nondiscriminatory” or “FRAND” basis, or other basis such asserted in the Skybridge Parties website listed in footnote 1 hereto, regarding US eminent domain and antitrust law). The soonest that the Motorola US Patents all expire is in year 2014, according to the review done by the Skybridge Parties accessing official ETSI records of the Motorola US Patents.⁴ Motorola has stated to the Skybridge Parties and to others in the US PMR market (that reported that to the undersigned) that any purchase or use of TETRA equipment in the US will be subject to legal action for infringement of the Motorola TETRA Patents. The TA has never, to the Skybridge Parties or to their knowledge to any other party publicly or otherwise, shown an evidence contrary to what is stated in this paragraph. Instead, the TA has regularly told the US PMR markets, in presentations made in the US, that TETRA is now and for some future time is blocked in the US for reasons explained in this paragraph.⁵

[1.15.2010: See, e.g., Attachment 1 hereto.]

[1.15.2010. See, e.g., Attachments 2 and 3 hereto.]

⁴ Those records are included in the documents that may be downloaded from the “ETSI Alleged...” page at www.tetra-us.us. The undersigned notes here that the last letter Motorola wrote to ETSI included on that page as a download asked ETSI to make public (to place on the ETSI public IPR database) the Motorola letters to ETSI as to the Motorola position to not license the Motorola TETRA Patents. That is not noted on the above cited page, including in the alerts at the top, and this should be noted here.

⁵ The TA adds, as does Motorola to ETSI, that there is a possibility that if the US markets show enough interest, that one day, under vaguely stated (and clearly not legally binding) conditions. Motorola—which the TA describes as its “good member,” may chose to amend its blocking and litigation threat position noted above and accept licensing on some undefined basis of the Motorola TETRA Patents. Motorola and the TA, and persons in the PRM trade press repeating them, attempt to turn on its head and speciously portray the Motorola position as follows: Motorola *will* license its US patents under those undefined, unscheduled conditions (including adoption of a US version of TETRA by TIA, resolution of alleged interference issues with P25, and other matters). But when the undersigned asked the TA repeatedly, and equipment makers that are active TA members in matters relating to TETRA in the US repeatedly, if any of them even had, saw or heard of any written statement from Motorola reciting those vague conditions, they all said “No.” That is specious characterization since it presents a solution that does not exist and the conditions for which are not defined, even orally, and it ignores the reality which is that Motorola holds valid US patents for TETRA and indeed currently and for the foreseeable future refused to license them on fair reasonable and nondiscriminatory basis or to any basis and threatened those who seek TETRA.

The Skybridge Parties asked the TA to provide those Relevant Facts soon, and stated to the TA that if it elects not to do that, then the undersigned will proceed with a more substantive filing Opposing the TA Petition. The undersigned does not expect the TA or related parties to provide those Relevant Facts (since in the past such requested were denied), but the undersigned asked for them explaining that providing them would decrease contention before the FCC is any of them provided those. The undersigned will in a future filing in this matter, submit that request and any response to it.

[1.15.2010.
The TA has
not
responded
as of this
date, nor
has
Motorola.]

Initial Opposition

2. Procedural Defects

The Skybridge Parties reference and incorporate their comments above, and further state the following in opposition, as well as to support their requests for party designation, public notice, and investigation.

While the Skybridge Parties may not oppose some aspects of the TA Petition in their planned subsequent Opposition, in this Initial Opposition they present a summary as to why is fundamentally flawed. They informed the TA of their threshold concerns noted below and other concerns, but the TA did not respond.

3. Lack of standing

The TA (again, the TETRA Association) lacks standing to file the Petition. The TA is not a US legal entity. Moreover, it does hold any FCC licenses outright (or any rights to any FCC license via any lease) for which any current (or even possible future) TETRA equipment may be operated under the rules subject of the requested waivers and thus under any grant of the waivers. Further, TETRA technology is not owned or controlled by the TA or UTC (comments on UTC are below) nor does the TA manufacture TETRA equipment. TETRA technology is developed under ETSI as an international wireless standard for major (and minor) PMR digital trunked-systems; manufactured and sold by various companies, and may be purchased by

qualified radio-spectrum licensees in various nations including in the US (if not for the blocks and threats noted herein). No such licensees or TETRA equipment makers joined in and signed the TA Petition.⁶ As the US Court of Appeals for the DC Circuit found in 1996, in *SunCom v.*

FCC (underling and item in brackets added):

SunCom filed requests with the Commission on February 1, 1994 for ... a waiver of the Commission's eight-month construction deadline for 220 MHz licenses, [contained in the FCC rule section] 47 C.F.R. § 90.725(f)....

"In order to establish standing under Article III, a complainant must allege (1) a personal injury-in-fact that is (2) 'fairly traceable' to the defendant's conduct and (3) redressable by the relief requested." *Branton v. FCC*, 993 F.2d 906, 908 (D.C.Cir.1992) [318 U.S.App.D.C. 379] (quoting *Allen v. Wright*, 468 U.S. 737, 751, 104 S.Ct. 3315, 3324-25, 82 L.Ed.2d 556 (1984)), cert. denied, --- U.S. ----, 114 S.Ct. 1610, 128 L.Ed.2d 338 (1994)....

At the time SunCom filed the requests, it had no 220 MHz licenses of its own but only "written expressions of interest..."

These allegations fail to show the required "injury-in-fact," namely, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not "conjectural" or "hypothetical," ' " *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992) (citations omitted)....

⁶ They are not even served copies. And the licensees most active in seeking TETRA and who have the most unused spectrum for TETRA, the Skybridge Parties, area not only not served a copy, but are opposed by the TA in their efforts to clear the Motorola block and litigation threat of TETRA in the US. In addition, the only two equipment makers that the Petition, on page 10, names and weakly suggests may bring TETRA "competition" to the US, Motorola and Tyco/Harris, are not only not served copies, but Motorola is the direct cause of blocking TETRA in the US and Tyco/Harris does not make TETRA core radio systems and terminals (but claims it provides "common universal networking platform" [*] which supports TETRA systems") ([*] from: <http://www.tycoelectronics.com/aboutus/news/prodnews.asp?id=1267>) and it sells its own 4-slot TDMA, Open Sky. It has not supported TETRA introduction in the US. Petitioner sought support from Tyco, including in direct meetings, but with no success. Both Motorola and Tyco/Harris, who do not want TETRA in the US, are dues paying major members of the TETRA Association, have Board seats in that Association, and have major influence in that Association and in UTC due to their being the major suppliers to UTC members. (See below regarding UTC.)

Suncom v. FCC, 87 F.3d 1386; 318 U.S. App. D.C. 377; 1996 U.S. App. LEXIS 16257

(“*Suncom*”).⁷ As noted above, as with SunCom, the TA has no FCC licenses based on which it may seek rule waivers (a licensee may seek waivers of FCC technical rules for equipment seeks to use, as well as other rules pertaining to its license(s)), and that may be injured by lack of grant. Nor is the TA an equipment maker that may submit equipment to the FCC to utilize grant of the waivers. Nor, according to Court in *Suncom*, does the TA have standing based on hypothetical interest and injury of any of its members that are equipment makers or licensees (the undersigned does not believe there are any such FCC licensee member of the TA):

Public Citizen v. Lockheed Aircraft Corp., 565 F.2d 708, 717-19 (D.C.Cir.1977) (economic injury claimed by industrial machinery dealers represented by trade association challenging sale of property by General Services Administration to private company--loss of members' opportunities to sell their own property to purchaser or to purchase one of plants sold--was "too speculative" where association "claimed only that its members were interested in purchasing 'some of the property sold to [the purchaser]' " and there was no evidence of "any existing relationship between [purchaser and members] which would require [purchaser] to buy from them as opposed to buying from non-members" nor any "demonstration that its members presently participate in or contemplate participation in a viable business project which had adequate resources and an existent intent to purchase property such as [that claimed]").

4. Lack of Ripeness and Futility

The TA Petition is not ripe, and indeed, the evidence noted herein demonstrates that it is, and grant of it would be, futile. It is against FCC rules, court precedent and public law and policy to petition the FCC to waive its rules when, if that relief is granted, that relief cannot be

⁷ More broadly, standing to bring actions before a US administrative agency, decisions on which are subject to appeal to courts (as in the case of FCC waiver grants or denials) are subject to Article III standing requirements under the US Constitution, which the TA clearly fails to satisfy for reasons summarized in the *SunCom* case cited above. The requirements include demonstration of injury, causation and redressability, none of which the TA in the TA Petition satisfies. In addition to the *SunCom* case, see the US Supreme Court decisions *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), and *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

applied.⁸ See the US and Circuit cases cited above regarding standing. In sum, as further shown herein, the TA Petition is not ripe and is futile since (i) Motorola blocks TETRA in the US and threatens patent infringement litigation against those who do seek TETRA,⁹ and (ii) no TETRA equipment maker is willing to sell TETRA equipment in the US until that Motorola blocking and threat is legally and clearly solved.

5. Lack of Candor, False Statements, Misleading Statements, and Abuse of Process

For reasons noted above and further below, the TA lacks candor in submitting the Petition, when it certainly knows the defects of lack of ripeness and futility described above,¹⁰ and it knows or should the defect of lack of standing.¹¹

⁸ Indeed, that is the way in which the TA has conducted its presentations to the US PMR markets: it first asks key staff and officers of US FCC licensees to spend their time and resources to listen to the TA and support its interests (the reality of which is keeps in private discussion with its members, including what the TA often publicly states in the US as its “good member, Motorola”) but without itself showing to these FCC licensees that it has sincerity and standing. That sincerity and standing, if it existed, would require the TA—the self proclaimed authority on TETRA—to demonstrate to the interested US PMR market, including the Skybridge Parties, that it has a legally sound solution to its “good member” Motorola’s blocking of TETRA in the US and litigation threats, or at the very least that it is strongly and publicly seeking and supporting legal solutions, including that others demonstrate, and is using best-effort means at its lawful disposal to change the Motorola blocking and threat position. It has not done that, despite repeated requests by the Skybridge Parties. Instead, at meetings the undersigned arranged, the TA CEO, Phil Kidner, stated first discussed its “good member” Motorola, and then stated repeatedly that the undersigned did not know what he was talking about regarding legal solutions, and the same TA CEO informed a large gathering of UTC (United Telecom Council) member as their annual meeting in in Orlando that “you can’t have TETRA” while at the same meeting the undersigned attempted to explain legal solutions.

⁹ Motorola, the TA, and others aware those threats understand basic US patent infringement law including that damages may be sought for a multiple of actual damages.

¹⁰ The TA Petition goes so far in misleading statements as to suggest that Motorola stands ready to sell TETRA in the US, when it knows Motorola to be the direct cause of the blocking TETRA in the US (with TA shelter), where it tells the FCC on p. 10:

There are a large number of TETRA product manufacturers worldwide, including U.S. companies such as Motorola and Tyco/Harris. This...allows for greater competition and lower prices

Also, the premise stated in the TA Petition is false. It asserts that “a number of manufacturers stand ready to produced TETRA-based devices in this country.” The Skybridge Parties have spent hundreds of hours, and large travel, legal, and other costs, in communications with all TETRA equipment manufacturers (and with companies that have SDR radios capable of running TETRA) that expressed any interest in providing TETRA for the US market. They all, without exception repeatedly state to the undersigned, and in the US market that they will not manufacture and sell TETRA (including in the current spectrum ranges for TETRA that are within US PMR bands) for use in the US without the legal block and litigation threat by Motorola described herein legally and clearly solved. They have told that to the undersigned in communications that also included the CEO and Chairman of the TA. There is no evidence otherwise, and that includes after repeated requests by the undersigned to the TA officers and to said TETRA equipment manufacturers. It is also reflected in the website www.tetra-us.us including in the Declarations page, and none of the manufacturers listed therein issued any corrections to that website’s controller at any time (the undersigned is in charge of that website for Skybridge Spectrum Foundation and its supporters). Even if that statement of in the TA Petition were true, it fails to provide standing for reasons given above. But it is a further disqualification to submit a false statement to the FCC to seek anything from the FCC. The FCC staff time is an important public resource paid for by US public tax dollars and other public funds, and it cannot lawfully be taken up under guise of false statements or lack of candor in failing to disclose material facts.

In addition, the TA Petition also rests on misleading statements (as well as the false ones noted above) including where it asserts, on pages 1 and 12:

¹¹ It is not believable that the TA, in association with UTC (see below) and with FCC-law expert legal counsel does not understand this defect.

A waiver will allow TERrestrial Trunked RADio (“TETRA”) technology, widely used around the world as the next generation standard for digital mobile radio technology, to be used in the United States. ...

For the reasons set forth herein, the Association requests waivers of Sections 90.209, 90.210 and 2.1043, permitting the TETRA standard to be used in the United States. These requested waivers will serve the public interest, as the availability of TETRA in the United States will open the U.S. market to a low cost, fully-interoperable, and cutting edge technology much needed by public safety and private mobile radio users.

First, TETRA is not the “next generation” or “cutting edge” by any stretch.^{12 13} It is a mature technology originating in ETSI and commenced in the European market in the early to mid 1980s. The next generation of PMR is wide band and broadband PMR, for example, the IP Wireless TD-CDMA system used in the New York City NYCWiN network. Nor is TETRA “low cost,” rather, it is generally more expensive than current analog PMR per coverage. It may be as cost effective for coverage capacity. It is less expensive than P25, but P25 is known to be over priced or at least very expensive, as the GAO noted in GAO-07-301.

In addition and more fundamentally, the TA Petition only deals with some services, not even all, within FCC Part 90. There is other spectrum including under Parts 80 and 22 that could be used for TETRA (and contain licensees including the Skybridge Petitioners who hold more spectrum than any the TA can demonstrate, that have been pursuing TETRA) and thus the TA Petition is misleading to state without qualification that if its sought waiver are granted, that will “allow” TETRA to be used in the United States and “open the US market” for TETRA. Also, many of those Part 90 radio services that the TA Petition deals with involve shared spectrum where TETRA multi-site systems, that require geographic exclusive spectrum for good planning and operations, will be difficult, and where co-channel

¹² If PMR, especially in the US, was not so inept and subject to ingrown old-boy stifling manipulation, partly noted herein, as compared to CMRS, that assertion would be downright laughable.

¹³ Likewise false, for above and other reasons, is the TA Petition statement:

No other available LMR technology has the capabilities of TETRA, which combines voice (two-way radio), mobile telephony, status messaging, short data service, packet data up to 28.8k/bits, enhanced data (up to 600k/bits), encryption, and more.

users in the vicinity using older analog systems will be substantial (raising issues not unlike those Nextel faced in deploying iDEN, which is somewhat similar to TETRA, on 800 MHz Part 90 channels). The TA Petition exhibit at p. 13, however, says it deals with only adjacent channel issues. While these problems may be addressable, they are glossed over in the TA Petition, and the TA does not show that it attempted to resolve the potential problems with parties that may be affected. It did not even serve a copy on parties it must know have interest. That includes NPSTC:

On invitation by Marilyn Ward of NPSTC, the undersigned arranged a presentation on TETRA before NPSTC in June 2008.¹⁴ The presentation included a TA Board member, Roger Dowling (as presentation at the preceding footnote shows). As a result of the presentation, the NPSTC Board and the TA agreed to undertake a joint technical study objectively comparing TETRA and P25. Mr. Sorley for NPSTC was assigned to this task on behalf of NPSTC. NPSTC proceeded seriously, as shown in its November 2009 Board Minutes on page 13.¹⁵ However, the TA declined to provide the needed funding to proceed with this important project that was obviously a major opportunity for TETRA in the US, if the TA actually had interest in that versus serving the interest of its Motorola to block and at least delay TETRA until its US patents for TETRA expire (the last of which, for TETRA Release 1, appears to expire in year 2014). The TA both avoids and even opposes the major opportunity for TETRA in the US presented by the Skybridge Parties that have the most spectrum in the US for advanced intelligent transport, but also by the public safety community: public safety and transportation are two of the largest three markets for TETRA. However, the point here is that the TA is fully aware of the interest and the concerns (justified or not) by NPSTC and its public safety constituents, yet it did not address those in the TA Petition nor did it serve a copy on NPSTC or any of those constituents. That is a defect for reasons noted above.

¹⁴ Copy at: <http://www.npstc.org/meetings/20080618-Havens-TETRA-v2.pdf>.

¹⁵ Copy at: <http://www.npstc.org/meetings/NPSTC%20Gov%20Bd%20November%202008%20121808.pdf>

The disqualification created by lack of candor, false and misleading statements, and the like is well known.

[T]he Commission defines lack of candor to include not only providing false information but also “concealment, evasion or other failure to be fully informative accompanied by an intent to deceive.” *Trinity Broad. of Fla., Inc.*, 10 F.C.C.R. 12020, 12063 (1995).

James A. Kay v. FCC, 396 F.3d 1184; 364 U.S. App. D.C. 448; 2005 U.S. App. LEXIS 1540 (hearing, en banc, denied). In this *Kay* case, the US Circuit Court for FCC upheld the FCC decision including the following:

See also *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981) (“As a licensing authority, the Commission is not expected to ‘play procedural games with those who come before it in order to ascertain the truth’ [....] Moreover, the failure to provide information known to be relevant or a failure to respond based on a facially implausible theory may constitute lack of candor. *Fox Television Stations, Inc.*, 10 FCC Rcd at 8508 PP137.

In the Matter of James A. Kay, Jr., FCC 01-341. Released January 25, 2002. 17 FCC Rcd 1834; 2002 FCC LEXIS 409.

For reasons noted above, the TA Petition also appears to be an abuse of process under standards the Commission has set:

....concealed material facts...."none of NMTV's applications seeking a minority exemption . . . disclosed to the Commission information about Duff's relationship with TBN or NMTV's relationship with TBN.".... NMTV's applications were "models of nondisclosure" ... and therefore constituted abuse of process.

In re Applications of Trinity Broadcasting of Florida, FCC 98-313. Released April 15, 1999. 14 FCC Rcd 13570; 1999 FCC LEXIS 1591. In the instant matter, the TA does not disclose the most relevant facts noted herein (the Motorola blocking and threats), and it asserts a false premise, as discussed above: that appears to be abuse of process. Submitting a petition to the FCC that one knows, or should know, to be futile and thus pursued for some other reason is also abuse of process.

6. Grant of the Sought Waivers Cannot Be Assigned;
Waiver Assignments Are Not Allowed Under FCC Rules;

and Suggested Assignments Fail to Meet Standing Requirements

Even if (and the undersigned at this time questions it for cause to be noted later) the TA Petition had technical and public interest merit under the criteria required for waiver grant under Section 1.925 of the FCC rules or Section 1.3, there is no provision under FCC rules or policy for the TA to assign a grant to any TETRA equipment manufacturer or to any US licensee seeking to use equipment under the grant. More fundamentally, the TA fails to have and demonstrate standing in this situation, as discussed in the last quote from the *SunCom* case included above. Any grant of the requested waivers would be to the TA. Rule waivers, as opposed to rule changes, are granted in unique circumstances demonstrated by a party that has standing to seek and benefit from grant upon showing of extraordinary need and that has otherwise complied with FCC rules and policy in good faith. Waivers cannot be sought and granted and then, in effect, licensed off to others (such as some TA members) who may not in fact meet waiver standard, which is what the TA must be suggesting. TETRA is used only for high-power government-licensed spectrum, not for use in unlicensed bands, and in any case, the TA does not make equipment for unlicensed or licensed bands. Nor does it have any legal or other power to obligate its members that make TETRA equipment to follow its dictates or use any FCC waiver grant. Again, see the *SunCom* excerpts above.

7. Lack of Notice to Potentially Effected Parties

The TA also fails to serve a copy of the TA Petition on parties that, by its own text, it knows may be affected. That is discussed above, and indicated further below.

8. Lack of Identification of and Certification by the Engineer

Any technical exhibit or assertions of decisional importance, as in this case, warrant the identification of and certification by the engineer that authored them, for the FCC and parties in interest to consider its reliability and to communicate if appropriate with the authors. The TA Petition did not provide this.

9. Further Discussion of the Skybridge Parties’
Interest and Purpose in this Matter

The Skybridge Parties seek to minimize use of FCC staff recourses on matters where petitions lack standing and/ or that are not ripe or futile, as in this case, and where petitioners choose to withhold those defects. Thus, they present this pleading.

The Skybridge Parties have sought TETRA equipment from equipment companies that expressed willingness to provide it (subject to a legal solution to the Motorola blocking and threats) and respect of US law and interests involved, and the also sought support from and gave support to the TA for the same purposes. After an initial period (reflected in www.tetra-us.us), the TA elected a contrary position, and now presents a petition to the FCC without meeting threshold requirements that are well known, that lacks required candor, and that seeks to evade the interest of the most active FCC licensees seeking TETRA in the US, the Skybridge Parties, that also have the most available FCC spectrum to use TETRA.¹⁶ Those TA actions hurt the case for TETRA in the US and assist in the blocking and threat position of Motorola.

The Skybridge Parties have clearly and repeatedly informed the TA, its members including Motorola, and UTC¹⁷ of its position, and given in detail the reasons. None of them

¹⁶ The Skybridge Parties will further explain that in the upcoming more-full Opposition.

¹⁷ UTC informed the undersigned that it has an ad hoc group that developed with the TA the TA Petition. The TA and UTC did not include the undersigned for the Skybridge Parties in that group, except to deliver a copy of the petition after it was filed, despite the fact that UTC knows well that the undersigned has keen interest in the matters of the TA Petition and that group, and the Skybridge Parties include a UTC member, and has recently asked to be part of that group and get past group documents. UTC has not granted that request. Similarly, the undersigned asked the TA CEO and Chariman if one of his companies could join the TA as a member under its standard rules and procedures, and they did not respond. It is clear that the TA and UTC do not want their position before the FCC, or in the US markets, to be subject to any opposing views. Apart from the matters of their internal laws with respect to members and member applicants, the undersigned believe that is against public interest in these circumstances based on the public position and work of the undersigned and the Skybridge Parties to open access for TETRA to all in the US, based on fair application of law and clear public interests at stake. Motorola is a principal member of both the TA and UTC. The undersigned and the Skybridge Parties have no relation with Motorola, and do not accept relations with any company contrary to US law and

have shown facts and law to the contrary. However, any violations of US law and public interest thereby caused by Motorola and parties in direct or indirect support of Motorola is a matter subject to the primary jurisdiction of US courts (and in some instances, also the US Federal Trade Commission, the US Department of Justice, and analogous State authorities). If violations are found, that could be relevant to related matters then pending or later submitted to the FCC under its jurisdiction.

10. Substantive Defects: Failure to Meet Waiver Standard

The Commission has set forth its standards to grant waivers, including with regard to equipment rules for licensed spectrum as follows (the below is from such a case) (footnotes in original, with numbering changed to confirm with this pleading):

In analyzing the waiver requests, we consider established legal standards for waiver of the Commission's rules. The Commission will adhere strictly to its rules unless a party can demonstrate that "in the public interest the rule should be waived."¹⁸ Furthermore, the Commission may only waive a provision of its rules for "good cause shown."¹⁹ The party petitioning the Commission for a waiver bears the burden of showing good cause: "[a]n applicant [for a waiver] faces a high hurdle even at the starting gate."²⁰ The Commission must take a "hard look" at applications for waiver²¹ and must consider all relevant factors when determining if good cause exists.²² Finally, "[t]he agency must explain why deviation better serves the public interest, and articulate the nature of the special circumstances, to prevent discriminatory application and to put future parties on notice as to its operation."²³

The TA did not commence to this burden. The defects discussed above as procedural defects also demonstrate lack of the required public interest to meet this substantive criteria,

public interests. That poses a problem with may parties' business practices, but it is their problem under public law and public interests.

¹⁸ *FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964).

¹⁹ 47 C.F.R. §1.3.

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²¹ *Id.*

²² *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

²³ *Northeast Cellular Telephone Company, L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

since, to start with, the TA Petition is not joined and signed by any FCC licensees or TETRA equipment maker that may take use grant of the Request in the public interest.

In addition, the TA Petition glosses over the technical and public interest assertions in the text, with little support other than in the exhibits.

Further, the TA Petition asserts that the subject emission mask for which it seeks waiver is based on analog technology and is not suitable for digital technology. What it appears to argue is for a rule change, not a waiver, since a waiver is appropriate only if the subject rule is fundamentally sound, and it is clear that most recent-years and new PMR is digital like TETRA.

Also the Exhibit at p. 13 asserts without explanation or citing applicable FCC rule(s) that TETRA must comply with Mask B, C or G. Applicable Part 90 rules involved other emission masks in the spectrum ranges in which the TA Petition is limited. (While the TA Petition may be correct in this matter, it is not shown clearly as it should be.)

The “Purpose” of the exhibit²⁴ is not demonstrated since it only deals with emission masks and that is only one factor pertaining to that purpose.

The Skybridge Parties may comment further on this substantive criteria issue, in a further filing if the TA Petition is not dismissed and the opportunity arises.

11. Request to Designate the Skybridge Parties as Parties

Based upon—(i) the substantial interest of the Skybridge Parties expressed herein,²⁵ (ii) the fact that the TA did not include and serve them as parties when filing the TA Petition, nor did

²⁴ “The purpose of this technical note is to analyze TETRA’s impact on other technologies used for Land Mobile Radio (LMR) in the United States and to show that it can co-exist without causing interference to users of such technologies.”

²⁵ Unlike the TA, the Skybridge Parties as FCC licensees of spectrum suitable for TETRA have standing to seek waivers with regard to TETRA if they chose to. Skybridge has in addition nonprofit interest to support US public agencies in advanced PMR as part of its core purposes. And all of the Skybridge Parties may rightfully challenge any petition to the FCC that fails to meet procedural threshold requirements, and that employs statements they know to be false and that lack required disclosures, since that challenge is in support of FCC law and protection of FCC recourses in the public interest.

the TA associate entity in preparing the TA Petition, United Telecom Council (“UTC”), despite the expressed interests of the undersigned and his Skybridge Parties to the TA and UTC and their clear understanding of the Skybridge Parties’ interests in TETRA in the US and the facts asserted or withheld in the TA Petition, and (iii) the failure by the TA in submitting the TA Petition to disclose material facts shown above and to employ false facts, and to submit a procedurally defective Petition (that the TA and UTC could hardly believe was not defective), and the Skybridge Parties bringing that to FCC attention herein—*the Skybridge Parties request that the FCC designate them as parties to any processing of the TA Petition by the FCC.* This is appropriate since the Skybridge Parties act here in the public interest, including compliance with FCC rules and polices, and since they have major interests in seeing that TETRA is lawfully and effectively made available to the FCC, and not by attempts that have contrary intent or effect, as in the case of the subject TA Petition. If the TA Petition were a petition that permits a party with standing to submit a timely challenge and thereby become a Party, and if the Skybridge Parties (or some of them) had standing and submitted said challenge, then they would automatically become parties. But that does not apply in this case. Thus, the above request is submitted.

12. Request to Place on Public Notice
and For Investigation, and Not for Dismissal

For reasons given above, the Skybridge Petitioners believe that while the TA Petition is procedurally defective and thus may be dismissed without dealing with the substance, it possesses matters of major importance to the US PMR industry, including the blocking and threats by Motorola, the lack of candor and false statements in the TA Petition by the Association which includes Motorola as one its major members,²⁶ and since if TETRA in the US was not blocked,

²⁶ Motorola is the, or one of the several, major sellers of TETRA worldwide (that is common knowledge and can be proven up if needed) and has great influence in the TA, which Association informs the US markets including the undersigned that Motorola is its “good member” despite its blocking of and threats described herein. The TA also complained to the undersigned that

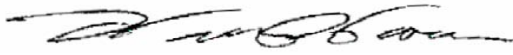
subject to threats, and subject to defective and misleading petitions (which divert from the real problem stated herein), it would be a great benefit to the US PMR market and to the public served by PMR operators including the Skybridge Parties for much needed public Intelligent Transportation Systems, utilities, railroads and others.

Thus, the Skybridge Petitioners request that the TA Petition be placed on public notice with an appropriately long pleading cycle, such as 90 or 120 days, given the magnitude of the issues raised and the amount of material that is likely to be submitted, and indicating the issues that the FCC asks to be addressed. After obtaining public comments and replies, the FCC may then proceed with any investigation it believes is warranted. The FCC has authority to fashion such a proceeding, even when a petition that commences it is procedurally defective. For example, it employs notices of inquiry proceedings upon outside request or its own motion, and also investigates licensees and license applicants under Section 308 of the Communications Act.

(The rest of this page is intentionally left blank.)

Motorola bitterly objects to the TA having any association with the undersigned based in his position in www.tetra-us.us, and after that complaint, the TA followed that Motorola objection faithfully in support of Motorola, at minimum. UTC also informed the undersigned, and also the US PMR markets via its trade press, that it also rejects the attempts at legal solutions to the Motorola block and threats set forth in www.tetra-us.us. The undersigned asserts that UTC has private interests for that that oppose US public interests and the interests of its members that are not too much beholden to and afraid of Motorola (such that those that depend on Motorola due to extensive current use of its products). US utilities are among the major users and beneficiaries of governments eminent domain powers and of the public rights of way. But on the other hand, they have for the most part long since obtained valuable private and public property by said exercise, and they now generally oppose wireless operators that see to “piggy back” on their rights obtained from government. In any case, for whatever reason, UTC opposes the legal solutions the undersigned asserts, and it has none itself. Thus, its participated in formulating and presenting TA Petition may fairly be questioned.

Respectfully submitted,



Warren Havens

President for each of the
“Skybridge Parties”²⁷ —

Skybridge Spectrum Foundation
Environmental LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC

2646 Benvenue Avenue
Berkeley California 94704
Phone 510 841 2220

December 15, 2009

²⁷ Use of the term “Skybridge Parties” herein is for convenience only, and by its use, none of the included parties imply that they are not (as is in fact the case) distinct legal entities under law, and in ownership, assets, business pursuits, and other essential distinctions, or that the nonprofit Skybridge Spectrum Foundation does not fully adhere to its obligations under applicable law to act only in support of defined public interest and not for any private interest when in some cases, including here, it joins in action with other legal entities that are not nonprofit entities with the same public-benefit interests and restrictions.

Declaration

I, Warren Havens, as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing “Initial Opposition...”, including all Attachments, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

A handwritten signature in black ink, appearing to read "Warren Havens", written over a horizontal line.

Warren Havens

December 15, 2009

Attachment

The URL links to the full documents listed and summarized below are under their titles below.

These documents describe some of the Skybridge Parties' FCC-license based business plans and actions, and some their TETRA related actions in addition to those at www.tetra-us.us (which as described early in the text above, has not been updated since early 2009 and thus does not reflect of their position in this pleading).

[Added in these Initial Comments: A more full, current list is at: http://www.scribd.com/warren_havens.]

[Feb. 2007 Complaint to ETSI re Motorola Refusal to License US TETRA Patents](#)

Complaint to ETSI (European Technical Standards Institute) from Telesaurus LLCs concerning Motorola refusal to license its US patents for TETRA, to block TETRA sales and use in the United States. ETSI at first responded in writing that it would obtain a response from its member Motorola and report that to these Complainants, but later ETSI refused to provide the Motorola response, claiming that was an internal confidential matter. See also the document "November 2009 Open Letter to TETRA Association & ETSI re US TETRA radio Patents- Licensing Availability."

[C-HALO Cost-benefit Study Outline, UC Berkeley](#)

A 2010 University of California-Berkeley group cost-benefit study on Cooperative High Accuracy Location (C-HALO) with tightly integrated dedicated wireless communications, for nationwide smart transportation systems in the United States, with extensions to other domains: A next generation nationwide location infrastructure. The study is sponsored as public-interest research by unrestricted grants and grant pledges from Skybridge Spectrum Foundation and related LLCs that hold FCC licenses for nationwide smart transport, energy, and environment, including free core services (those most needed for safety and transport efficiency). The study follows on past work by the same University group and Skybridge in these areas.

[Skybridge-Telesaurus 2009 Overview of High Accuracy Location- HALO- to US DOT RITA](#)

2009 presentation to US DOT RITA by Warren Havens for Skybridge Spectrum Foundation (with support by Telesaurus LLCs, and in association with Prof. Raja Sengupta at University of California Berkeley, of nationwide High Accuracy Location (HALO) as the foundation for advanced Intelligent Transportation Systems, provide sub-meter accuracy guidance of vehicles along and across lanes to greatly reduce accidents, congestion, pollution, etc.

[Skybridge - Telesaurus Plan: Nationwide High Accuracy Location Based Intelligent Transportation \(2008\)](#)

2008 Summary of the Telesaurus LLCs- Skybridge Spectrum Foundation plan for nationwide Intelligent Transportation Systems based upon high accuracy (sub-meter) location (HALO) and guidance of vehicles, along and across lanes, using terrestrial and space (GPS-GNSS) multilateration and other forms of location determination, along with tightly integrated dedicated two-way and one-way radio communications, and dynamic GIS, as from ESRI. The plan was submitted at the 2007 ITS World Congress in Beijing, the FCC, NTIA and other entities and fora. The core safety and efficiency services will be at no cost to government agencies and the general public. Telesaurus and Skybridge are developing the technical components and deployment concepts with assistance of transportation-, wireless-, and other experts at the

University of California, Berkeley, and other entities. More recent work includes support of smart transportation as integrated with smart or intelligent transportation, as in V2G (vehicle to grid) enabled by said HALO+tight wireless. Smart transportation and energy systems will in large part merge, and they each and especially together need the planned dedicated radio location and communication networks.

[High Accuracy Location \(HALO\) for Intelligent Transport & Infrastructure, and GPS backup](#)

2009 presentation regarding planned nationwide High Accuracy Location (for vehicles, etc.) to augment and backup GPS, to the US Office of Position Navigation & Timing (that coordinates GPS among Federal agencies and is liaison with private sector) by W. Havens of Skybridge Spectrum Foundation (that holds FCC mLMS licenses with Telesaurus Holdings) and Prof. Raja Sengupta of University of California Berkeley, also with Prof. Kannan Ramchandran. The same presentation was made to other public agencies, and associations involving wireless communication and public safety.

[Smart Transport, Energy & Environment Radio - STEER, presentation to Caltrans, 2009](#)

2009 presentation of STEER- Smart Transport, Energy & Environment Radio systems by Warren Havens of Skybridge Spectrum Foundation (with support of Telesaurus LLCs, and Prof. Raja Sengupta and others of University of California Berkeley) to Caltrans. STEER is a proposed nationwide dedicated radio service for purposes noted above. It includes HALO- High Accuracy Location, and core services at no cost to end users (like GPS).

[Smart Railroads- 200 Wide Band+ High Accuracy Location, By Federal Railroad Admin, 2008](#)

2008 presentation by the Federal Railroad Administration of developments for smart or intelligent railroads based in large part on advanced wireless communications using 200 MHz radio spectrum, additional spectrum for wider band wireless, high accuracy location by enhanced GPS, etc. This parallels similar developments in intelligent or smart highways, electric grid, airports, and other core infrastructure, and for smart environment (wide scale environmental monitoring and protection). Skybridge Spectrum Foundation, Telesaurus and related LLCs focus on wireless for these Smart Transport, Energy, and Environment Radio systems, with core

[Errata and Notice: Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption \(licensee antitrust violations & torts\)](#)

This an Errata to the document entitled on Scribd: "Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption (licensee antitrust violations & torts)."

[Oct 2009 Petition to FCC for Declaratory Rulings Re Section 47 USC 332 Preemption \(licensee antitrust violations & torts\)](#)

Petition to the FCC for declaratory rulings whether the Communications Act including §332, or the jurisdiction of the Federal Communications Commission, preempts State or Federal court jurisdiction and awarding of monetary damages and other action sought by one CMRS or PMRS service provider against another, for violation of State or Federal antitrust law, tort law, and certain other law. Submitted by Skybridge Spectrum Foundation and affiliated LLCs in October 2009. See also Errata filed October 29, 2009. Submitted to obtain FCC rulings on preemption issues in pending court cases in the Ninth Circuit, the California Courts- at the Supreme Court level, and US District Court in New Jersey, regarding Skybridge Spectrum Foundation and /or affiliates Telesaurus LLCs as plaintiffs and as defendants Paging Systems Inc. (Sandra and Robert Cooper) Maritime Communications Land Mobile (Sandra and Donald Depriest)

(MCLM), Mobex (merged into MCLM), and in one case, Radiolink (Randy Powers).

[November 2009 Open Letter to TETRA Association & ETSI re US TETRA radio Patents- Licensing Availability](#)

November 2009 open letter to the TETRA Association & ETSI regarding the availability of licenses for the US Patents held by Motorola for TETRA technology so that TETRA radio equipment can be sold and used in the US. The same questions posed to these entities now, as in past years when they first pledged responses, then later refused responses. These entities publicly assert that they stand for promotion of TETRA worldwide, and have member that members act in accordance including with regard to licensing on fair and reasonable terms their patents for TETRA, but to date have not publicly or effectively acted in accord, including since they allow their member, Motorola, to violate those policies. This letter also cites the current Motorola web page on licensing its patents for TETRA which does not exclude its US patents for TETRA, indicating that Motorola either changed its past position to not license said US TETRA patents, or that Motorola is misrepresenting its position to the relevant markets.

[Tait Radio Support of Motorola, Unlawful Block of TETRA US](#)

Legal Notice from Telesaurus, Havens & associates to Tait Radio of violation of US law by publishing false statements supporting Motorola's unlawful and inequitable blocking of TETRA radio technology and equipment in the United States. Comment on TETRA as superior to other private mobile and fixed radio systems for use in US.

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(1 of 3\)](#)

Federal Communications Commission August 2009 inquiry to three companies controlled by Donald and Sandra Depriest: Maritime Communications / Land Mobile LLC, Maritel, and Wireless Properties of Virginia regarding many conflicting statements of licensee control, affiliates and gross revenues (and bidding credits in AMTS Auction 61) and other matters, based upon the various petitions to the FCC submitted by competing bidders in that auction managed by Warren Havens. This is the first of three letters each dated August 18, 2009. The responses of these three above-named entities as well as related FCC filings by said competitors are in FCC public ULS files and may also be otherwise published.

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(2 of 3\)](#)

[Maritime Communications Land Mobile LLC, D. Depriest, & Affiliates: FCC Investigation, Aug 2009 \(3 of 3\)](#)

[Spectrum Bridge, SpecEx- Legal Notice- Failure to Disclose AMTS License Conditions, Proceedings, Etc.](#)

Legal Notice to Spectrum Bridge, SpecEx, by W. Havens for his AMTS licensee companies, regarding failure to disclose FCC-investigation and FCC-rule issues in sales marketing of AMTS licenses of Maritime Communications/ Land Mobile and Thomas Kurian. (Before FCC [On ULS], and to Spectrum Bridge, the Havens' AMTS licensee companies presented detailed facts and law as to why they were the rightful high bidders for the AMTS licenses issued to MCLM in FCC Auction 61, and they have a binding contract to obtain 90%+ of the T. Kurian AMTS

license. Also, the FCC is investigating (commencing mid August 2009) under Section 308 of the Communications Act the facts demonstrated in the Havens' companies, as indicated in this document.

[FCC Communications Act Sec. 308 Decision- Licensee Kay, Attorney Dennis Brown- Lack Candor, License Revocation, Fines](#)

FCC full Commission decision in 2002 regarding licensee Kay and attorney Dennis Brown regarding investigation under Section 308 of the Communications Act, finding lack of candor and other failures in responding, and underlying violations of FCC license rules, and resulting in license revocations and monetary fine. Attorney Dennis Brown is the same attorney handling the year 2009 (commenced) Section 308 investigation regarding Donald and Sandra Depriest, Maritime Communications Land Mobile LLC (MCLM), Wireless Properties of Virginia, and Maritel (said three entities controlled in relevant periods by one or both of the Depriests).

[The following is the Certificate of Service used for the “Previous Submission,” defined above.]
[These Initial Comments will be submitted on ECFC.]

Certificate of Service

I, Warren C. Havens, certify that I have, on this Tuesday, December 15, 2009, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a printed copy of the foregoing “Initial Opposition...” to the following, as follows. The service copies served by the US Postal Service (“USPS”) mail are being placed into a USPS drop-box today, but if that is after the last time that said box’s contents are picked up by a USPS employee for processing, said mail may not be processed and post marked by the USPS until the next business day. Also, courtesy copies, not for purposes of service, will be sent to the emails listed below.

The TETRA Association

Its attorneys:

Henry Goldberg
Laura Stefani
Goldbeg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, D.C. 20036

Phil Kidner, CEO
phil.kidner@tetra-association.com

Phil Godfrey, Chairman
phil.godfrey@tetra-association.com

Other entities with interest (of which the Skybridge Parties are aware) and that are named in this pleading, and that may have relevant information

Motorola, Inc.

Attn: Stu Overby and Mike Krauss
1301 East Algonquin Road
Schaumburg, IL 60196
Stu.Overby@motorola.com
Mike.Kraus@motorola.com

Harris Corporation

Attn: Eugene Cavallucci, Gen. Counsel
Harris Corporation Headquarters
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Melbourne, Florida 32919-0001

Utilities Telecom Council

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NPSTC

Ralph Haller, Chair
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NPSTC

Tom Sorley, Tech Committee Chair
Deputy Director Radio Comm Services
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611 Walker Street - Suite 936
Houston, TX 77002
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ETSI--

Eric Jansen, Director, Legal Affairs
Erik.Jansen@etsi.org
Bernt Mattsson, Technical Officer for TETRA
Bernt.Mattsson@etsi.org

TIA

Danielle Coffey
Vice President, Government Affairs
10 G Street NE, Suite 550
Washington, DC 20002
dcoffey@tiaonline.org

[Execution on next page.]

A handwritten signature in black ink, appearing to read "Warren Havens". The signature is fluid and cursive, with a long horizontal stroke at the end.

Warren Havens

ATTACHMENT 1

**Telesaurus JV
Telesaurus VPC LLC
AMTS Consortium LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC**



www.telesaurus.com

Warren Havens, President

Jimmy Stobaugh, General Manager

Phone (510) 841 2220 / fax (510) 841 2226

wchavens@aol.com / jstobaugh@telesaurus.com

Nationwide spectrum & solutions for ITS & environment

Berkeley California

January 14, 2007

Via email to:

Marcello.Pagnozzi@etsi.org

Michael.Froehlich@etsi.org

Director General
European Technical Standards Institute
650, route des Lucioles
06921 Sophia-Antipolis Cedex
FRANCE

Re: Motorola assertion of US patents and patent infringement to block TETRA in US

Director General:

Last month, I discussed the matters of this letter with Marcello Pagnozzi and Michael Froehlich, to whom I am emailing this letter as noted above. As a result of that discussion, I submit this request for assistance within ETSI policy and procedure for purposes noted below.

My companies, listed above, are described in our website listed above. These companies, which are commonly controlled by the undersigned, have a joint venture, listed above, for technology and other matters. This joint venture plans to join ETSI as an associate member for purposes noted herein once we ascertain the proper procedures.

In brief, as described in our website, we have FCC licenses nationwide in certain lower 900 and lower 200 MHz radio services for wide-area Intelligent Transportation Systems ("ITS") and complementary applications. We seek to use TETRA phase 1 and 2 products for these purposes, after suitable adaptation to our frequency bands. Several TETRA equipment companies that are ETSI members have committed to provide such products for our use, subject to clearing up the legal issues describe herein based on Motorola patent assertions.

We also have interest in pursuing technical developments based on TETRA 1 and 2 technology for certain forms of radio communication and radio location specific to core ITS that are subject to international standards development, including under ISO TC 204 and ISO TC 211.

Core ITS wireless, as we are pursuing, will be used heavily by public agencies, transportation entities, and other operators of large vehicle fleets, and requires mission critical networks and products. We have been in communications with these market segments for years as we have developed our companies. We have regularly heard interest expressed in TETRA and major frustration that it is not available, especially in consideration of its international growth and its advantages versus alternatives, including P25. After the attacks on 9-11-2001, and then Hurricane Katrina, where lack of communications serious hampered responders and contributed to great loss of life and property, any blocking of technology and products useful to mitigate such problems is blatantly contrary to the nation's interest.

However, for years and to the present time, I have been informed by other potential TETRA users, and by Motorola directly, that Motorola asserts legal rights to block and will block TETRA in the US.¹ In particular, Motorola attorneys informed me that Motorola will sue for patent infringement, to obtain a court injunction to block any entity, including my companies, that buy or use (even for nonprofit research purposes) any TETRA products in our nation. Exhibit 1 hereto is the latest example. Also, the TETRA Association and its members who make TETRA equipment are also aware this blocking position of Motorola.

I am aware that in October of 2006, Motorola declared to ETSI nine US patents as essential to TETRA, and that these will be available under the ETSI IPR Policy, as listed on your patent database online.² Still, it is my understanding that Motorola asserts other US patents for the blocking purposes noted above. I list in Exhibit 2 below Motorola US patents that I believe are among those that Motorola asserts for the noted blocking purpose: *there are probably others* not on this list which, of course, Motorola can identify.

After review in recent months, my companies do not believe that Motorola can lawfully assert, including for purposes of patent infringement action, any US patents that are or may be essential to TETRA, since it has failed to timely declare these to ETSI under the ETSI IPR Policy, and that failure, we believe, constitutes violation of US antitrust law for reasons given in the unanimous decision of the Federal Trade Commission in August 2006 in the Matter of Rambus Incorporated, Docket No. 9302.

¹ Motorola has asserted that since APCO or ANSI has not adopted TETRA, that the US market does not seek TETRA, and that is the reason Motorola will not license its patents essential for TETRA. (See, e.g., the Exhibit hereto.) However, those organizations do not constitute or dictate to the US market. My companies alone have sufficient licensed spectrum and capability to represent a substantial market for TETRA, and we know of many others interested. Indeed, the predictable high interest is obvious due to TETRA's competitive strengths.

² See end of Exhibit 2 below. I believe those nine patents relate to TETRA 2. I do not address those herein, other than to note that, at least for some TETRA products and systems, it may be ineffective to license patents essential for TETRA 2 if patents essential for underlying TETRA 1 technology are not available, and if that is the case, then declaring these as available under the ETSI IPR Policy is not practical.

Nevertheless, due to our understanding noted above that Motorola maintains its asserted blocking rights, we request ETSI assistance to ask Motorola (1) if it still asserts at this time, and for any remaining patent term, any US patent as essential to TETRA 1 or 2 other than the nine noted above (declared in October 2006), and (2) if it does, that it promptly declare these patents to ETSI for the purpose of TETRA and agree to license them under the ETSI IPR Policy as it did for these nine.³

If the above inquiry does not result in prompt compliance with items 1 and 2, then we request that ETSI undertake any other useful measure(s) within your policies and procedures to enable US companies, including ours, to secure and use TETRA in our nation, to enable TETRA vendors the major opportunity this will provide.

It is our belief that weekly there are substantial losses occurring to US companies, the US public, and TETRA vendors willing to fairly compete in the US, by the blocking noted above. There is still an excellent opportunity for TETRA in the US, but time is of the essence, and the opportunity may diminish if not developed reasonable soon. For my companies, we need to clear up this matter and proceed substantially with TETRA this year, and many other US companies and agencies are in similar positions.

If you find it useful, it is acceptable to transmit a copy of this letter to Motorola and any other party relevant to our request above.

We look forward to hearing from you or your staff on these matter.

Sincerely,

/s/ Warren C. Havens

Warren C. Havens

President

Encls.

³ By this request, and any response to it by Motorola, we do not waive our position that such Motorola patents may be unenforceable with respect to Tetra equipment sales and use in the US, based on the Rambus decision note above and for other reasons.

Exhibit 1

3 pages: continuous email string. Emphases added.

Subj: **Re: Tetra in US**
Date: Thursday, September 21, 2006 12:57:43 PM
From: wchavens
To: Paul.Bartusiak@motorola.com

Correction: as I first wrote below, "Our communications are not under a confidentiality agreement." I was inquiring about the Motorola position on these public matters.

In a message dated 9/21/06 12:52:56 PM, wchavens writes:

Mr. Bartusiak,

Thank you for the communication.

In a message dated 9/21/06 12:20:21 PM, Paul.Bartusiak@motorola.com writes:

CONFIDENTIAL

Mr. Havens,

This matter has been directed to my attention. The Terrestrial Trunked Radio (TETRA) standard was adopted by the European Telecommunications Standardisation Institute (ETSI) for mobile radio communication systems in Europe. Motorola has a licensing policy related to its patents for the TETRA standard and licenses those patents for operation of TETRA products in Europe, and may also license those patents in countries for which the corresponding standard development organizations (SDOs) subsequently choose TETRA as a national standard technology for public safety systems.

U.S. SDOs developed a new standardized technology that they felt would best meet the needs in the U.S.- the Project 25 (P25) standard. Federal and state officials, as well as Motorola, recognize the need for a common radio system standard for situations involving first responders, homeland security/emergency response professionals, and other related public use situations. Thus, Motorola has chosen not to license its patents for TETRA products in the U.S. but to actively promote P25 in the US, including licensing its patents for the P25 standard. Motorola believes that its policy of licensing its patents for TETRA products in Europe and P25 products in the U.S., as those are the standards regionally adopted by the respective SDOs, is the best way to enhance interoperability within those regions, and is lawful and consistent with any standards body licensing obligations.

There are many inaccuracies in your below email and not all are addressed in this email. However, note that Motorola does not know what is contained in confidential license agreements between third parties, and there is no agreement between Motorola and third parties to not allow TETRA products to be sold or operated in the U.S. Rather, as provided above, Motorola simply has a licensing policy for its own patents related to TETRA.

Back and forth correspondence is not suitable for a matter such as this, and a failure to respond to any of your future correspondence does not reflect an agreement on Motorola's part as to the accuracy of statements contained in such correspondence.

Regards,
Paul Bartusiak
Sr. IP Counsel
Motorola Law Department

From: wchavens@aol.com [mailto:wchavens@aol.com]

Sent: Saturday, September 09, 2006 3:11 PM
To: Kraus [Mike-IPR-CMHK01](#)
Cc: jstobaugh@telesaurus.com
Subject: Re: Tetra in US

I was first referred to Mike Kraus, a Motorola IPR attorney and submitted to him my notes of our phone discussion, below. Afterwards, I was contacted by Paul Bartusiak: see preceding page. –W. Havens

Mike:

From our discussion yesterday, below are my notes of what I understood from you, followed by my comments. Let me know if anything in the notes is not correct. The Capitalized defined terms below (except FRND) are for these notes only.

1. Motorola is one of approximately 12 companies ("Contributors") who have all executed an agreement regarding the IPR that each claims it owns that is used or available for use in Tetra products ("Claimed IPR") based upon a particular "FRND" licensing agreement (here, the "Agreement"). This Agreement and each Contributor's Claimed IPR are stated in ETSI documents on the ETSI website. (I have not yet looked for these.)
2. Each Contributor has confidential, non-public agreements with other Contributors and some additional equipment vendors (together, the "Licensees") regarding licensing their respective Claimed IPR for such other's use in Tetra products ("Confidential Agreements"). While the Confidential Agreements are confidential, you noted that they are essentially the same for each Licensee, and each prohibits use of Motorola's Claimed IPR in Tetra products sold or distributed in the USA.
3. Unless Motorola later changes its mind, such as by TIA, APCO, or Federal agencies adopting Tetra for use in the USA (and Motorola believes that they and others in the US [excepting my LLCs] do not want any products that would compete with P25), Motorola would assert its rights under the Confidential Agreements to prevent any vendor of Tetra products from selling or distributing such products in the USA, including for the purposes I described: testing and possible subsequent use in our planned networks and applications.

As I explained, our FCC licensed spectrum in the lower 200 and 900 MHz bands will be used for Intelligent Transportation System networks (under 47 CFR §90.350 et. seq., other applicable FCC rules, and certain ISO TC standards), and other compatible high-public-interest applications, including emergency wireless for public agencies, emergency alerts, and environmental monitoring and protection.

We naturally seek a wide competitive choice of vendors, technology, and products, and in particular, proven standards-based products with multi-vendor support and relatively attractive pricing. Tetra is in this category in our view.

Regarding Tetra, our legal concern is centered around antitrust law issues. Restraint of Tetra products in the US (and "lock-in" [*Eastman Kodak v. Image* '92] regarding P25), especially by the dominant vendor in the US in private radio, Motorola, appears to be against the public policy concerns protected by antitrust law, especially in current, post-"9/11" times where robust competition in mission-critical and other private wireless is highly in the public interest in the US, at least equally to what is more successfully taking place overseas.

Also, it does not appear tenable to assert private confidential claims for the purpose or effect of restraint of public trade (e.g., I understand that courts rarely grant a seal of records in antitrust law cases).

The purpose I have in this exchange is to understand Motorola's position and asserted legal rights in these matters, so that I can look into this with experts, and then decide upon pursuit of Tetra or not for our spectrum bands and licenses.

Again, for this purpose, if Motorola wishes to correct any of my numbered notes above (if any are not accurate), or to otherwise comment on this memo, please do so.

Our communications are not under a confidentiality agreement.

Thanks again for discussing with me.

Regards,
Warren Havens

Warren Havens
President
• IATT Tech JV
• Telesaurus VPC LLC
• AMTS Consortium LLC
• Telesaurus Holdings GB LLC
• Intelligent Transportation & Monitoring Wireless LLC
Berkeley, California, USA
510. 841. 2220 - ofc
510. 914. 0910 - cell

Exhibit 2

See letter text.

1. US **4872204**. Filed Nov 24, 1987.
EP0269643. Mar 03, 1986. Ignoring Control. **Expired** on ETSI database.
2. US **5481541**. Filed Aug 13, 1992.
GB2259387. Nov. 03, 1990. Reserved Access. On ETSI database for DIIS under GB patent number.
3. US **4692945**. Filed Nov 19, 1986. **20 years exceeded**: may be expired.
EP0210181. Dec 31, 1984. Fragmentation. **Expired** on ETSI database. Applicable to TETRA under EP number.
4. US **4887265**. Filed Mar 18, 1998.
EP0332818. Mar 18, 1988. Shared speech and data channels. On ETSI database applicable to 3GPP under EP number. EPO says revoked.
5. US **5559807**. Filed Nov 17, 1994.
EP0619927. Nov 02, 1992. Linearization. On ETSI database applicable to TETRA as application number 93922524.
6. US **4905301**. Filed Jul 28, 1988.
EP0352786. Jul 27, 1988. Detecting overhead messages as cell identifier. On ETSI database applicable to TETRA under EP number.
7. US **4833701**. Filed Jan 27, 1988.
EP0398911. Jan 27, 1988. Roaming IDs and hub computers. On ETSI database applicable to TETRA as application number 89901513.
8. US **5239678**. Filed Nov 21, 1991.
EP0568658. Sep 30, 1991. Assigning voice call to a control slot. (May be in MPT1327 specification.)
9. US **5097508**. Filed Aug 31, 1989. (Listed as assigned to Codex Corp.)
EP0415163. Aug 31, 1989. Digital speech coder lag parameter. On ETSI database applicable to TETRA under EP number.
10. US **5359696**. Filed Mar 21, 1994.
EP0450064. Sep 01, 1989. Digital speech coder long-term predictor. On ETSI database applicable to TETRA under EP number.
11. US **5519730**. Issued May 21, 1996 (+ 17 years).
GB2266645. Oct 28, 1991. Re-declared Oct 2006. Including pilot symbols in a transmission of parallel symbols. On ETSI database applicable to TETRA under GB patent number.

12. US [5357571](#). Filed July 1, 1993.
EP1428403. Sep 11, 2001. Using TETRA SSI as a key modifier. Applies to DMO, in ETSI specification for TETRA Direct Mode air-interface encryption.
13. 14. Etc. ?? Regarding TETRA infrastructure and others regarding terminals ??

Below Motorola US patents were declared **October 10, 2006** to ETSI for TETRA (ETSI TS 100 392-2) as available for licensing under the ETSI IPR Policy.

Some of the below have EP counterparts not listed here.

1. US [5519730](#). May 30, 91. Communication Signal Having a time Domain Pilot Component. (On US Patent listing: Encryption synchronization combined with encryption key identification.)
2. US [5185796](#). May 31, 91. Transmitting encryption key ID with encrypted data.
3. US [5241544](#). Nov 01, 91. Phase rotation of sub-carriers to provide fixed pilot symbols.
4. US [5343499](#). Jan 09, 92. Frequency and phase synchronization on QAM sub-carriers.
5. US [5381449](#). Nov 01, 91. Peak to average power ratio reduction method- QAM.
6. US [5533004](#). Nov 07, 94. Method for Providing and Selecting Amongst Multiple Data Rates. Using fixed sized blocks (atomic units).
7. US [5559807](#). Nov 02, 92. PA linearization method appropriate to original TETRA.
8. US [6424678](#). Aug 01, 00. Using a repeated pattern of synchronization and pilot symbols. Scalable Pattern Methodology
9. US [7088734](#). Mar 27, 01. Simultaneous use of sub-slots on different frequencies by different mobiles.

ATTACHMENT 2

[NOTE: Highlighting is added- not in original email. - W. Havens. 1-15-2010]

RE: Motorola US patents for TETRA- availability for licensing at this time

Mon, November 30, 2009 9:36:10 AM

From Erik Jansen <Erik.Jansen@etsi.org>

:

To: Warren Havens <warren.havens@sbcglobal.net>

David W Taylor <david.taylor1944@btinternet.com>; Roland van der Boom
<roland.vanderboom@rohill.nl>; Lance Lucas <Lance.Lucas@sepura.com>;

Cc: "jstobaugh@telesaurus.com" <jstobaugh@telesaurus.com>; Bernt Mattsson
<Bernt.Mattsson@etsi.org>; Phil Kidner <phil.kidner@tetra-association.com>; Phil Godfrey
<phil.godfrey@tetra-association.com>

Dear Mr. Havens,

I would like to confirm the statement of Mr Kidner below (e-mail November 26).

Motorola has re-stated that it is willing to grant licenses in North America for its IPRs that are essential for the TETRA Standard **only if** the ETSI Standard will be transposed into a North American Standard (specifically by TIA).

Motorola stated that the standard transposition process would take into account the needs of the proposed users of the technology as well as the **constraints imposed by the regulator** to avoid interference in **the allocated** frequency band.

Please note further **that ETSI is applying in this case** its procedures applicable to cases where licenses for essential IPRs under an ETSI Standard are not available – in particular the process as set out in **Art. 8.2 of the ETSI IPR Policy, which implies the involvement of the European Commission.**

Kind Regards,

Erik Jansen

Erik Jansen, LL.M. | Legal Affairs Director

ETSI | 650 Route des Lucioles, 06921 Sophia Antipolis, France | +33 (0)4 92 94 42 60

From: Warren Havens [<mailto:warren.havens@sbcglobal.net>]

Sent: 27 November 2009 07:22

To: Phil Kidner; Phil Godfrey; Bernt Mattsson; Erik Jansen

Cc: David W Taylor; Roland van der Boom; Lance Lucas; jstobaugh@telesaurus.com

Subject: Re: Motorola US patents for TETRA- availability for licensing at this time

Phil and the TETRA Association:

I reply below.

ETSI:

I again request your response on these matters. I don't expect one since ETSI has not responded in the past regarding my formal complaint against Motorola (or to my opening email below) but my practice is to define and make a number of attempts to directly resolve legal issues.

I realize ETIS is essentially a private entity, but you support standards used by governments and markets worldwide.

TETRA and ESTI are getting a bad name by this monkey business: neither Motorola, nor the TETRA Association, nor ETSI will even be open and honest about its positions regarding TETRA in the United States. By that, you all cooperate to block and delay TETRA in the US and that violates US law including antitrust law.

The essence of antitrust law violation is deception and manipulation, and that is the nature of this matter. There is an old school of business and tech which attempts such deception and manipulation--that is business as usual unfortunately, but there is also a newer school that is based on open tech, fair competition by merit, market choice, etc. (along lines of companies such as Google, Amazon, etc.).

In this matter, Motorola, the TETRA Association and even ETSI are in the old school. My companies and nonprofit Foundation and our position is in the new school.

Regarding my complaint to ETSI: <http://www.scribd.com/doc/22567260/Feb-2007-Complaint-to-ETSI-re-Motorola-Refusal-to-License-US-TETRA-Patents> :

- ETSI in writing promised me a response to my complaint when once it got a response from Motorola, but when it had the response, ETSI circulated the response to many entities but it not only excluded me (for my companies) but threatened us legally when those documents (not confidentially marked) were found by some researcher and eventually made they way to me. (I submitted a counterclaim to ETSI.)

- I prepared and submitted my complaint to ETSI only after a discussion with the TETRA liaison and legal advisor, with the TETRA Association on the call, who all welcomed this. I was mislead since there is no meaning to submitting a complaint that will not be responded to: the only meaning is to waste the time of someone challenging the Motorola position, which is just what Motorola wanted.

- *As I note to Phil Kidner below, it appears that the Association and ESTI decided to deliver to me this new, same-old position of Motorola. If you do not dispute what Mr. Kidner writes below, then I rely on his statement is accurate according to ETSI. Here is his statement to be clear:*

"A representative from Motorola attended the ETSI General Assembly

earlier this week and stated that TETRA would need to go through the TIA process before Motorola would licence TETRA in North America."

As I noted to the Association, I expect this to involve legal action. The issue is not per se TETRA. (Frankly, TETRA is not the open tech it superficially appears to be, since it is subject to old-school deception and manipulation, and in that environment it has limited viability in the market.) The issues are larger ones of eminent domain and antitrust law, the collaborative parties responsible, and the market and private-party damages.

Regarding this statement by Phil Kidner of Motorola's position before the ETSI General Assembly this week: It appears to violate US and EU law, including the Sherman Act in the US and Article 81 of the Treaty of Rome in the EU. (Independently, Motorola and others cooperating in its blocking and delaying TETRA in the US,

discussed below, undermine the right of US government entities and parties in contract with them to use their eminent domain law rights to remedy the antitrust law violations.)

Said Article 81 applies to associations like ETSI, not only private for-profit entities, (Underlining and items in double brackets added:)

"1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

[[Patent licensing is a trading condition. see notes under 3 below.]]

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

[[Motorola and others in support are agreeing how to share and split US vs EU and other PMR markets, and supply of TETRA or other equipment supply in each.]]

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

[[Entities in the US are other trading parties, at minimum in markets that are clearly international and unfair business outside EU distorts fair business in the EU and vice versa.]]

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts. [[With court-case discovery, I expect to find this between Motorola and other TETRA entities.]]

2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,

- any decision or category of decisions by associations of undertakings,

- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question."

[[Patents fall under 3, but not when used to block the technical benefit of the patents, and when conditions not indispensable are added, like TIA approval, and that not only afford the opportunity to eliminate competition, but directly serve that purpose. Thus, Motorola cannot rely on item-3 exemptions. Back to item 1: Motorola is in violation, and thus under item 2, the "agreements and decisions" of Motorola (which the TETRA Association and ETSI, by their actions, support) are automatically void. Perpetuating these is further violation of this and other law.]]

Motorola is also in a dominant position in PMR in the United States, and combining the US and EU, Motorola may be in a dominant position, as defined in antitrust law.

Phil and the TETRA Association:

Thanks for the humor: the **same old Motorola story** now dressed up as a new variance? you did not know that?

In any case, according to the ETSI legal authority writing to me, ETSI's internal dealing with this Motorola regarding its US patents for TETRA is confidential, and that must extend to the poor old joke now delivered to the General Assembly. You know of that alleged confidentiality since I copied you on that communication in the past, and it is also at www.tetra-us.us. Thus, you and ESTI (which have together been on this whole email string) have a purpose is giving me this partial information on this private ETSI- Motorola-Association matter. **It is always the same from Motorola and its supporters-- TETRA is not available now, but boys and girls, one day it could be. That is a specious defense against antitrust law violation and other claims and damage. I do not think a court or other legal authority will accept that defense.**

My questions are in black and white in my emails in this string below.

I asked three times below and not once did you respond directly.

I posed the same essential questions to you and your Association for years. You promised to get me responses (as if you had appreciation of the work I and my companies were doing in the US to open it for TETRA), then you reneged.

It is shown in written records I retain that you present one thing to me informally from time to time, another to the US market orally when I am not around, and yet another when I ask for a response in writing.

In writing, your responses are a study in ambiguity: e.g., below you say first that "very little has changed," next that licensing NDAs make a 100% answer not possible (but you give no answer at all)[*], then finally a new thing "at variance to what I understood their position to be," and the new thing you state is the **same old story** that Motorola as said -- and your Association entirely know about-- for about a decade: e.g., see: <http://docs.google.com/viewer?a=v&q=cache:8eeV00WMI-EJ:ftp.tiaonline.org/secretariat/Tr-8/tr814-aug00-89002352.pdf+tetra+etsi+tia+godfrey&hl=en&gl=us&sig=AHIEtbTPgBsM-LhUF0GzMaoJ-vfQWppKnQ>

[*] You are incorrect to say below to me "as you know" regarding TETRA IP licensing being confidential and unknowable due to NDAs. What "I know" (as you know, since I have told you, and I have it on www.tetra-us.us) is the **ETSI IPR policy which requires FRAND licensing of TETRA patents with no geographic exception, and I also know that your Association alleges to be in a MOU with ETSI in support first and foremost of that IPR policy, without which TETRA is dead in the water and you Association has no meaning nor will you get a salary.**

You are the CEO of an international association and can be clear if you want to.

Never do you or Motorola state anything clearly in writing to me or anyone on the matters of and related to questions below, but **the Association makes numerous presentations in the US such as at IWCE and UTC meetings presenting the Motorola position and rejecting my position on US eminent domain law: In sum, that the US market cannot have TETRA now but maybe later if TIA approves, alleged interference and FCC tech rules issues are worked out and the like (and those will be largely controlled by Motorola and your Association in support: that can drag on for another decade, it has already been a decade: see, e.g., above link).**

I am my companies were the force to awaken TETRA in the US, but after a show of support initially, your Association takes the position of Motorola to keep it blocked and at least delayed, even though that is contrary to under US eminent domain and antitrust law and the US public interest.

I do not need to currently again ask Motorola. I have many times, directly, via ETSI, you, Rhode & Schwartz, open letters copied to Motorola, etc. and the answer is always the same as I summarize above. And in addition, you state below their current (same old) position just expressed to ETSI. I initiated the inquiry by ETSI leading to

this same-old story:

<http://www.scribd.com/doc/22567260/Feb-2007-Complaint-to-ETSI-re-Motorola-Refusal-to-License-US-TETRA-Patents>

It is your Association that is the international spokesperson for TETRA, and that is the active party in the US representing TETRA and this threshold issue of Motorola blocking and delay.

Sincerely,
Warren Havens

From: Phil Kidner <phil.kidner@tetra-association.com>
To: Warren Havens <warren.havens@sbcglobal.net>; Phil Godfrey <phil.godfrey@tetra-association.com>; Bernt.Mattsson@etsi.org; Erik.Jansen@etsi.org
Cc: David W Taylor <david.taylor1944@btinternet.com>; Roland van der Boom <roland.vanderboom@rohill.nl>; Lance Lucas <Lance.Lucas@seapura.com>; jstobaugh@telesaurus.com
Sent: Thu, November 26, 2009 7:14:45 AM
Subject: RE: Motorola US patents for TETRA- availability for licensing at this time

Warren,

Had you asked me these questions before then maybe I could have answered.

A representative from Motorola attended the ETSI General Assembly earlier this week and stated that TETRA would need to go through the TIA process before Motorola would licence TETRA in North America. This is at variance to what I understood their position to be. Therefore you need to speak to them.

I am sorry that I cannot be more helpful.

Kind Regards

Phil Kidner
The TETRA Association
+44 1275 543067
+44 7717 871824

Although this message and any attachments are believed to be free of any virus, no responsibility is accepted by the TETRA Association for any loss or damage arising in any way from receipt or use thereof.

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From: Warren Havens
[mailto:warren.havens@sbcglobal.net]
Sent: 25 November 2009 19:55
To: Phil Kidner; Phil Godfrey; Bernt.Mattsson@etsi.org; Erik.Jansen@etsi.org
Cc: David W Taylor; Roland van der Boom; Lance Lucas;

jstobaugh@telesaurus.com

Subject: Re: Motorola US patents for TETRA- availability for licensing at this time

Phil,

I addressed you, as you know, as the CEO of the TETRA Association. You are an authority on TETRA and speak in the US as an authority on TETRA. You are scheduled to speak again in that position of authority at the upcoming Spring 2010 IWCE Event. You are part of a group based on UTC to undertake certain tasks before the FCC regarding TETRA. Etc.

The US market regarding TETRA has in large part been shaped by your presentations in the US. My questions are threshold questions. I represent a substantial part of the US PMR market.

I asked below, and ask again, for your response "as far as the TETRA Association knows"

My questions are threshold ones that anyone in the US seeking TETRA would ask you. You would not be presenting TETRA in the US without having and providing answers to those questions. I act publicly and based upon applicable law: that is no reason that you cannot respond unless you and your association have a different policy.

Thus, please provide the answers "as far as the TETRA Association knows" on the three points I state.

Warren Havens

From: Phil Kidner

<phil.kidner@tetra-association.com>

To: Warren Havens <warren.havens@sbcglobal.net>; Phil Godfrey

<phil.godfrey@tetra-association.com>; Bernt.Mattsson@etsi.org;

Erik.Jansen@etsi.org

Cc: David W Taylor <david.taylor1944@btinternet.com>; Roland van

der Boom <roland.vanderboom@rohill.nl>; Lance Lucas

<Lance.Lucas@seapura.com>; jstobaugh@telesaurus.com

Sent: Wed, November 25, 2009 5:20:53 AM

Subject: RE: Motorola US patents for TETRA- availability for licensing at this time

Warren,

As you know, licensing is often the subject of NDAs etc between the parties. Therefore I cannot be 100% certain that any reply I give would be 100% accurate hence my suggestion for you to speak to Mike Kraus. I have copied his details below.

Mike Kraus

Director, Licensing

Intellectual Asset Management

Government & Public Safety

Business

Motorola, Inc.

T: +1 (847) 576 0147

F: +1 (847) 761 5226

E: Mike.Kraus@motorola.com

Kind Regards

Phil Kidner
The TETRA Association
+44 1275 543067
+44 7717 871824

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From: Warren Havens
[mailto:warren.havens@sbcglobal.net]
Sent: 24 November 2009 20:01
To: Phil Kidner; Phil Godfrey; Bernt.Mattsson@etsi.org;
Erik.Jansen@etsi.org
Cc: David W Taylor; Roland van der Boom; Lance Lucas; jstobaugh@telesaurus.com
Subject: Re: Motorola US patents for TETRA- availability for licensing at this time

Phil,

In response to my first question below you write: "very little has changed since we last spoke about this recently." Am I correct that your answer means that, as far as the TETRA Association knows:

(1) Motorola still currently refuses (or declines, or does not agree) to license its US patents for TETRA to any other company that makes and sells TETRA equipment (so they may provide it to the US market, including my companies),

(2) Motorola has not issued a written legally binding commitment (or even a written commitment, whether deemed binding or not) to license its US patents for TETRA at a future time, such as upon certain US organizations approval of TETRA as a technology, and

(3) Motorola orally informs parties interested in TETRA in the US, such as at PMR-market events (UTC meetings, etc.) that[*] the way that they may eventually obtain TETRA is by expressing their interest, and at some future time such as after TIA approves of TETRA, and certain alleged interference matters are resolved, etc. then Motorola will or may, for undefined fees (whether FRAND or not) license its US patents for TETRA.

- - - -

[*] As opposed to my eminent-domain law position which I have stated at www.tetra-us.us, and to Motorola directly, to Motorola via the TETRA Association, and to Motorola via UTC. As you know, in a trade press article citing UTC's Jill Lyon on the Motorola position, UTC dismissed the eminent domain solution, and similarly at the UTC meeting in Orlando, for the TETRA Association you informed the attendees that they cannot have TETRA, notwithstanding the eminent domain position I had publicized and was at that meeting to present. My point here is that the Motorola is a major member of UTC and the TETRA Association, and those entities present TETRA publicly in accord with the Motorola oral position noted above which rejects my eminent domain position (based on 28 United States Code Section 1498, and similar States' laws).

- - - -

Note: In the above, by Motorola US patents for TETRA, I mean all its patents essential for TETRA systems and radio-terminal equipment as currently made by companies such as Rohill, Sepura, Teltronic, Unimo, etc. including TETRA Release 1 equipment products.

Regarding Mr. Kraus, could you please provide to me his current contact information (name, title, office address, email, fax, phone, etc.) ? If that is on your public website's members list, let me know and I will get it there. I believe you gave me his email in a past year, but I do not have access to that currently, and also that may now be changed.

Sincerely,
Warren Havens
President
Skybridge Spectrum Foundation
Telesaurus, Environmental, Verde Systems, & other LLCs
Berkeley California
www.telesaurus.com
www.atlswireless.com
www.tetra-us.us
510 841 2220 x 30

From: Phil Kidner
<phil.kidner@tetra-association.com>
To: Warren Havens <warren.havens@sbcglobal.net>; Phil Godfrey
<phil.godfrey@tetra-association.com>; Bernt.Mattsson@etsi.org;
Erik.Jansen@etsi.org
Cc: David W Taylor <david.taylor1944@btinternet.com>; Roland van
der Boom <roland.vanderboom@rohill.nl>; Lance Lucas
<Lance.Lucas@sepura.com>; jstobaugh@telesaurus.com; warrenhavens@mac.com
Sent: Tue, November 24, 2009 12:12:00 AM
Subject: RE: Motorola US patents for TETRA- availability for licensing
at this time
Warren,

Thank you for your email.

Very little has changed since we spoke about this recently. I suggest that you speak to Mike Kraus (I have previously given his contact details to you) who appears to be leading on these issues for Motorola.

I am sorry that I cannot be more helpful at this time.

Kind Regards

Phil Kidner
The TETRA Association
+44 1275 543067
+44 7717 871824

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any loss or damage arising in any way from receipt or use thereof.

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From: Warren Havens
[mailto:warren.havens@sbcglobal.net]
Sent: 18 November 2009 14:57
To: Phil Kidner; Phil Godfrey; Bernt.Mattsson@etsi.org;
Erik.Jansen@etsi.org
Cc: David W Taylor; Roland van der Boom; Lance Lucas; jstobaugh@telesaurus.com;
warrenhavens@mac.com
Subject: Motorola US patents for TETRA- availability for licensing at this time

TETRA Association
Phil Kidner, CEO
Phil Godfrey, Chariman

ETSI - European Technical Standards Institute
Bernt Mattson, Technical Officer for TETRA
Erik Jansen, Legal Affairs Director

cc: as indicated.
bccs: other interested parties.

Gentlemen,

Beginning in year 2006, I communicated with your associations regarding the question posed below in this email. I submitted various requests orally and in writing, including a formal complaint to ETSI in February 2007. I explained to your associations, and publicly in www.tetra-us.us, certain US law applicable to this matter, and legal consequences.

I am again seeking (for the US markets and purposes noted previously and again noted below) an answer from your two entities or associations as the authorities on TETRA under your public statements and marketing.

I saw the below on the current website of your member, Motorola, Inc.--
http://business.motorola.com/publicsafety/licensing/programs_tetraessentials.html
The web page above includes:

".... Motorola's TETRA Essentials Licensing program grants rights to

Motorola's
TETRA I and TETRA II Essential patent families.

Since Motorola's patent
portfolio is large and expanding, additional patents
determined to be essential to the TETRA standard are
occasionally identified.

Once identified, Motorola declares the patent to ETSI and TETRA licensees automatically gain access to these patents without
additional cost or administrative burden...."

Said web page, including the statement above, does not indicate any exclusion of United States ("US") patents.

Question to ETSI and the TETRA Association severally:

Does Motorola now agree to license its US patents for TETRA, as a straight forward reading of the above web page would conclude, or not?

- Is that information publicly available, or only available to your association's boards, officers, and/or members on some restricted or confidential basis?
- If for any reason you cannot provide to me the answer, can you please direct me to the Motorola, Inc. ("Motorola") representative (name, title, office address, email, fax, phone, etc.) that has the authority to answer that question, if Motorola chooses to answer it?

Please respond by the end of this week.

It is a simple question and you are the leading authorities.

Also, there are certain pending matters in the US for which this information at this time is needed.

In regards to this question, while the public statements by both ETSI and the TETRA Association regarding core purposes include promotion of the standard worldwide with no restrictions, in this case the TETRA standard and equipment thereunder, I have been privately (but with no confidentiality obligation) informed in the past in writing by both ETSI and the TETRA Association that I am not entitled to and will not be provided to an answer to the above and similar questions, since those are private internal matters among the members, including Motorola, and I do not represent member entities (but, as you know, seek TETRA for the United State markets including for my companies that hold nationwide FCC licenses for intelligent transportation systems, and other PMR). Rather, I was first informed by both ETSI and the TETRA Association that they would confer with Motorola on this question and then let me know the answer, but after my repeated attempts, I was later informed by both ETSI and the TETRA Association that I would not be provided any such answer.

However, since I recently saw the webpage cited above, and on that page your member Motorola appears to stand ready to license any of its patents for TETRA (without exclusion of its US patents) I am asking this question again, in case either of your entities chose to answer this question at this time.

As with my past inquiries, this not a confidential inquiry and any responses, or lack thereof, will not be treated confidentially. As in the past, the basis of my inquiry is: on my side, US public interest and legal compliance, and on your side, the public positions of your associations: openness, promotion of open-standard TETRA internationally, member policies to secure the preceding, applicable laws of the UK and France pertaining to nonprofit legal entities, etc.

Sincerely,

/s/

Warren Havens

President

Skybridge Spectrum

Foundation

Telesaurus, Environmentel, Verde Systems, & other LLCs

Berkeley California
www.telesaurus.com
www.atliswireless.com
www.tetra-us.us

ATTACHMENT 3

From: "w.c. havens" <warrenhavens@mac.com>
Subject: **Fwd: 2. Complaint to ETSI, re violation of antitrust law. 2. Response to ETSI 12.11.08 complaint.**



Date: January 2, 2009 9:10:03 AM PST

To: Phil Kidner <phil.kidner@tetra-association.com>, Phil Godfrey <phil.godfrey@tetra-association.com>

Cc: Kraus Mike-IPR-CMHK01 <Mike.Kraus@motorola.com>, Walter Weigel <Walter.Weigel@etsi.org>, Yann Elias <yann.elias@etsi.org>, "JANSEN; erik" <Erik.Jansen@etsi.org>, jstobaugh Stobaugh <jstobaugh@telesaurus.com>, "w.c. havens" <warrenhavens@mac.com>

To:
Phil Kidner, CEO
Phil Godfrey, Chairman,
Board Members (Directors) (via the CEO and Chairman),
of the TETRA Association

CCs:
Mr. Mike Kraus, for MOTOROLA
ETSI Director General and legal advisors

BCCs:
Various interested parties

Re: TETRA in the United States (and Canada)

Dear Mr. Kidner, Mr. Godfrey, and Association Board Members:

We hope you all have a good new year.

This email will be posted on the page at www.tetra-us.us that concerns the below matters, *along with your reply*, or a note by me if you don't.

The page is called: "[ETSI Alleged Call for TETRA US Patent Licensing.](#)"

- I am conducting these matters in the public, since my position is based on public law and the public interest.
- As in the past, I offer to correct any information or opinions I use publicly, if anyone brings to my attention any material error.
- Also I will post contrary opinions if supported by citing relevant facts and law.

At that page I post, near the top, a recent letter to me from Mr. Weigel on behalf of ETSI.
Next on that page, I post my response to Mr. Weigel and ETSI.

In my response, I allege based on the facts known to me, which seem clear and are extensive, that **ETSI** has chosen for many years to not take any substantive action to enforce its goal and policies with regard to international, in this case US and Canadian, access to TETRA, by either obtaining compliance from its member MOTOROLA or enforcing sanctions, or dropping said goals and policies which, at least, would not further sustain in the international markets a false impression of **ETSI** and **ETSI** open standards for use by MOTOROLA (and other **ETSI** members) to gain trade advantages. Misleading the markets for artificial trade advantages is unlawful, at least under US law.

I am directing this to the **TETRA Association** since, based on the facts known to me, the **Association** is doing the same and not doing the same as ETSI in regard to this matter. I note that in my response to Mr. Weigel. In addition, the **Association** would not support my efforts to obtain support from US entities that have eminent domain rights (from Federal agencies, down to State and local government, to critical infrastructure companies, etc.) to use those rights to gain access to TETRA. Time and again, the **Association** rejected any association with those efforts, instead suggesting to me that it was privately working to obtain from MOTOROLA an arrangement where it would license its US patents for TETRA, similar to the position of ETSI to me: that its communications with MOTOROLA to seek compliance with its goals and policies on

this matter are private.

Based on the facts I have, ETSI and the **Association** have conflicts of interest, where the benefits you get from your member MOTOROLA directly and indirectly outweigh your responsibilities under law, which I summarize herein and further in my letter to Mr. Weigel. I have no reason to doubt that **both associations** would prefer that both interests, MOTOROLA benefits and legal compliance, could be satisfied. But they cannot in this case. And this is not a new or minor matter.

My position is thus materially the same with regard to the TETRA **Association** as it is with ETSI.

- Both have major influence in the international, including US and Canadian, PMR equipment markets.
- Both have well publicized lofty goals to advance its PMR standards and member products, in this case TETRA in international markets including the US and Canada.
- References to membership and leadership and compliance in both are used by its members, including MOTOROLA, in hundreds of public advertisements and presentations and private meetings in the US and Canada for competitive advantages. My office has collected samples at direction of legal counsel.
- Both have taken no action, [*] however, to have MOTOROLA cease violating those goals and policies, while allowing MOTOROLA to continue as a member in good standing, and continue to use the reputation of **the two associations**, and its alleged leadership in both, for the noted market communications and advantage.
- This violates US law protecting fair trade, and I believe it also violates similar EU law.

[*] Rather, both have recently made statements which got to the US PMR trade press [not by my actions] that they are taking action to obtain MOTOROLA compliance, but based on the long history and facts, those do not appear to be serious, or may be results of deals made with MOTOROLA to drag on the matter and give a false appearance to the markets. Whatever they are, they are far short of any action by these associations, within their powers, to obtain compliance or expel the member in breach. Under US nonprofit organization law, the officers and directors who allow such breaches have liability. I do not know UK and French law, but would think that the **association's** organizational charters and adopted rules must be followed by officers and directors, as in the US.

Thus, my principal request, on behalf of the US PMR markets, under applicable US law, to **both associations** is:

- (1) to publicly enforce your public goals and policies by getting MOTOROLA compliance, or publicly kick out MOTOROLA for its violations,
- or (2) to publicly delete your goals and policies, keep MOTOROLA, and be private clubs without such goals and policies (there would still be unresolved problems, and possible further ones, but said action would mitigate damages).

*I ask for a response to the matters of this email from the **Association** to place on the public website as indicated above.*

As I note to Mr. Weigel in my letter, I expect to be part of certain legal action or actions in the US court systems with regard to these matters, even if MOTOROLA were today to cease taking actions to mislead the US markets and retrain trade, since it has already caused damages in the billions of dollars and indirect injuries. While, based on my experience to date with ETSI and the **Association**, I do not expect on-point substantive responses to the matters I raise, indicated herein, [**] I would expect that such US court actions would provide the means to obtain relevant information.

[**] Including:

- Regarding ETSI: my complaint to ETSI on MOTOROLA and TETRA in the US, was submitted in early 2007. I was told by Mr. Weigel in responsive letters that I would be informed of substantial actions taken. Instead, I received none on the substantial actions taken, noted on the website page described first above, but I received the recent letter informing me to not use the documents describing those actions, and threatening legal action (without citing legal authority as to suggested valid causes of actions).
- Regarding the **Association**: I was told that the **Association** was meeting with MOTOROLA a number of times, to seek agreement that it license its US patents for TETRA on a FRAND basis. I asked to receive information on the results of those attempts and was told I would get it. I never received any information. On the other hand, Mr. Kidner informed me that MOTOROLA was complaining bitterly about the **Association** having anything to do with myself and my efforts outlined at www.tetra-us.us. That complaint appear to have succeeded. Even MOTOROLA (letter from Mr. Kraus to me) has essentially admitted that US laws on eminent domain apply to its US patents for TETRA, and I have repeatedly shown that in detail to the **Association** (my presentations are based on research and advice by several US law firms), but the **Association** in effect dissuades the US markets from seeking that remedy, by ignoring to communicate about it and, instead, informing the US PMR press and markets that the **Association** is attempting to get MOTOROLA voluntary agreement on US patent licensing (which implies that is needed for a legal solution).

Further, the years-old (decade-old) MOTOROLA suggestion that, if APCO and/or TIA adopt TETRA, and if it is show that TETRA will not interfere with P25, then MOTOROLA will or may license its US patents for TETRA (on some basis, even if it

is FRAND), is a nonsense ploy.

- The Association knows it is, and I have facts and law ready on that, for the expected litigation. We don't need to debate it here, but for the current public record, I noted a few items:

- There is no legal reason for any approval by those organizations, nor are they the legal forum in the US for addressing radio interference: the FCC does that (and NTIA, for Federal agency radio users), and the FCC has long ago decided that 4-slot TDMA is acceptable, and has rules in place to for US PMR radio bands and services to control potential interference, including under "refarming" where 4-slot TDMA was ruled as acceptable-- after extensive comments including by Motorola and APCO.

- In addition, the more spectrum efficient a technology, the more it uses spectrum in time and space. Where the spectrum is licensed by a form of shared licensing, that could leave less spectrum in time and space for other systems with other tech protocols. However, that is not an "interference" issue, it is an issue of intelligent efficient use, vs. less smart and efficient use.

- From direct feedback I have from some US public agencies, from Federal down, some components and persons resist TETRA for no reason other than they have stakes in P25 and fear competition by TETRA. That, however, is contrary to foundations of US economic theory and law, existing from the start of the nation. That fear makes the case against their position. They can choose to continue with P25. But attempts to restrain trade, especially by misrepresentations and ploys--such as this assertion that ACPO, TIA, etc. should approve for the markets' benefit, or that MOTOROLA and its supporters in US public safety should conduct some testing on possible TETRA interference-- these are part of ongoing antitrust violations. Individuals and non-governmental associations involving US agencies are not immune from violations of US law, nor are individuals in US public agencies if the violations rise to the level of conspiracy to violate rights under the US Constitution, as I believe is the case here.

In sum, MOTOROLA (and others in support) pushing overpriced underperforming P25 in the US and blocking TETRA, is the same sort of blatant violation of US public interest, and various law, as in the recent Wall Street-mortgage fiasco that is damaging US and international economies.

The US and international public is fed up with companies in leadership positions that abuse their responsibilities in this way, and with their public-agency supports who go along with it. Associations that exist on espousing fair and free trade, but shelter and take payment from major abusers thereof, are a part of the problem.

We thus ask for your consideration, and taking action requested above.

Again, I am conducting these matters in the public, since my position is based on public law and the public interest. It is an informal trial before formal ones.

While these matters are not currently in public court, that is planned as indicated herein, along with presentations to parties in the US Congress and the new Administration. Serious attempt to resolve and clarify matters prior to such action is appropriate and results in more focused and efficient litigation and political-body presentations.

Sincerely,

Sincerely,
Warren Havens
President
Skybridge Spectrum Foundation
Berkeley, California, USA
www.tetra-us.us
www.telesaurus.com
warrenhavens@mac.com
jstobaugh@telesaurus.com
warren.havens@sbcglobal.net

Begin forwarded message:

| From: "w.c. havens" <warrenhavens@mac.com>

Date: December 22, 2008 10:02:55 AM PST
To: Johanna Grison <Johanna.Grison@etsi.org>
Cc: Walter Weigel <Walter.Weigel@etsi.org>, Yann Elias <Yann.Elias@etsi.org>, "JANSEN; erik" <Erik.Jansen@etsi.org>, jstobaugh Stobaugh <jstobaugh@telesaurus.com>
Subject: Re: 2. Complaint to ETSI, re violation of antitrust law. 2. Response to ETSI 12.11.08 complaint.

Johanna,
Thank you for th forwarding.
In the future, I will use the emails you list below on this matter and other appropriate matters.
Have a nice holiday.
Regards,
Warren Havens

- - - -

On Dec 22, 2008, at 12:45 AM, Johanna Grison wrote:

Dear Warren,

The message below was forwarded to the account of Walter Weigel, by the ETSI helpdesk. Please consider his email address for further correspondence as: <mailto:walter.weigel@etsi.org>.

Also, please copy our legal service as
<mailto:yann.elias@etsi.org> and
<mailto:erik.jansen@etsi.org>

Please note that, in the absence for Xmas holidays, I acknowledge receipt of your message on behalf of the ETSI Director General, but please note that ETSI premises will be closed from 22 December evening till 2nd January 2009. However, most of the ETSI people will be back in the office on Monday morning, the 5th of January 2009.

Wish you best wishes for a Merry Christmas and a happy and prosperous New Year.

Kindest regards,

Johanna Grison
Assistant to the Director General
Tel: +33 (4)92 94 42 10
Fax: +33 (4)92 38 52 10
<mailto:johanna.grison@etsi.org>

High Performance – Customer Focus – Integrity – Teamwork – Mutual Respect – Responsibility

From: HELPDESK ETSI
Sent: Monday 22 December 2008 08:39
To: Walter Weigel
Subject: FW: 2. Complaint to ETSI, re violation of antitrust law. 2. Response to ETSI 12.11.08 complaint.

From: w.c. havens [<mailto:warrenhavens@mac.com>]
Sent: 22 December 2008 07:12
To: HELPDESK ETSI
Cc: Kraus Mike-IPR-CMHK01; michael.froehlich@etsi.org; Phil Godfrey; Phil Kidner; terry@unimo.co.kr; Roger Dowling; Tim Mills; H.H. Muter; Jose Manuel Martin; jstobaugh Stobaugh; warren havens; w.c. havens
Subject: 2. Complaint to ETSI, re violation of antitrust law. 2. Response to ETSI 12.11.08 complaint.

ETSI Secretariat

650, route des Lucioles

06921 Sophia-Antipolis Cedex
FRANCE
Tel.: +33 (0)4 92 94 42 00
Fax: +33 (0)4 93 65 47 16
helpdesk@etsi.org

The attached letter is to the ETSI Director General, in response to his letter to me dated 12.11.2008.

Please acknowledge receipt of this email by "reply to all" response.

The persons copied on this email, and some bcc recipients, are persons who have interest or may have interest in TETRA in the US. None have responsibility for the views I express below, and we (the respondents noted below) do not rely on any support from the copied persons.

Sincerely,
Warren Havens
President
Skybridge Spectrum Foundation
Berkeley, California, USA
www.tetra-us.us
www.telesaurus.com
warrenhavens@mac.com
istobaugh@telesaurus.com
warren.havens@sbcglobal.net

ATTACHMENT 4

Below is from this link:

http://www.radioresourcemag.com/archivednews.cfm?news_id=5088

Highlights added by W. Havens for Skybridge Parties



Archived News Briefs

TETRA Vendor Receives FCC Type Approval, Motorola Backtracks (12/15/09)

By Sandra Wendelken

PowerTrunk, a Spain-based manufacturer that sells two-way radio equipment in North America, received FCC and Industry Canada type approvals for a TETRA base station. However, a Motorola official said the approvals are only one consideration for TETRA deployment in North America.

The FCC and Industry Canada granted authorization for the PowerTrunk BSR75 base station radio/repeater for the 800 MHz and 450-470 MHz bands. Timco Engineering in Florida, which performs compliance testing services for the FCC and Industry Canada, issued the certifications for each agency.

“What we are doing is modifying the TETRA modulation to comply with emission masks,” said Jose Manuel Martin Espinosa, executive vice president and chief operating officer for PowerTrunk. “There is no practical loss of performance or very small, less than 1 dB, in power, but the functionality is still the same.”

Last month, the TETRA Association filed a request for waiver of Sections 90.209, 90.210 and 2.1043 of the FCC rules to allow TETRA technology to be used in the United States. “PowerTrunk supports the waiver request from the TETRA Association to the FCC, but since there are uncertainties about how long such a process might take ... we consider that users shall not wait because type approval for the adapted version of TETRA is available already. Equipment can be software updated in the future if the waiver is granted,” Espinosa said.

TETRA is deployed worldwide with the exception of North America. “Timco is one of our telecommunications certification bodies, which means it does have the expertise and the jurisdiction and authority to certify equipment, so that anything that has been certified by them is the same as if it is certified by us,” said Bruce Romano, a spokesman for the FCC’s Office of Engineering and Technology. “So yes, it would be legal to be sold in the U.S. with a certification granted by Timco.”

In a recent letter, a Motorola executive said that the FCC and Industry Canada certifications aren’t enough to allow the technology to be offered in North America. A November letter to

the European Telecommunications Standards Institute (ETSI) from Mike Kraus, Motorola licensing director, said, “Type approval is only one consideration for TETRA deployment in North America.”

At a June [Utilities Telecom Council \(UTC\) meeting](#), Chuck Jackson, Motorola Sales and Service Inc. (MSSI) vice president and director of system operations, [said if](#) all the technical and spectrum-related issues are worked out, Motorola wouldn’t prohibit the technology’s use in North America. However, he said there must be a technical document put together among the vendors describing how TETRA will be developed in the U.S. market.

“It would appear that the information forwarded to you concerning statements made by Motorola at the UTC convention is at best incomplete and taken out of context,” said the Nov. 20 letter from Motorola’s Kraus to John Phillips, ETSI GA chairman. “Motorola’s position on the availability of TETRA licenses for North America remains unchanged from earlier statements on file with ETSI ... Motorola believes that the right course of action is for an accredited standards body in North America to work on transposing the TETRA standard and make any modifications needed to permit its use in compliance with regulatory requirements. The standards transposition process takes into account the needs of the proposed users of the technology, as well as the constraints imposed by the regulator to avoid interference in the allocated frequency band.”

As a result of the discussions at the latest ETSI General Assembly held Nov. 24-25, where Motorola representatives verbally confirmed its position outlined in the letter, ETSI officials asked the TETRA Association whether its members that seek intellectual property rights (IPRs) licenses in North America can follow the route proposed by Motorola. “If the response is negative and no other acceptable solution emerges in a timely fashion, [ETSI will activate the final stage of its procedures concerning cases of nonavailability of licenses — Article 8.2 \(v\) of the ETSI IPR Policy — which is to request the European Commission](#) to see what further action may be appropriate,” said Paul Reid, ETSI spokesman.

PowerTrunk’s Espinosa said it is offering a platform for North America that is P25 compliant and can be software upgraded to the TETRA platform when IPR issues have been resolved. Some vendor executives have said [TETRA IPRs](#) expire in 2012. Neither Motorola nor ETSI officials could confirm when TETRA IPRs expire.

Your comments are welcome, [click here](#).

[Comment. AFTER the above the ETSI legal director communicated with W. Havens. See Attachment 2 to these Comments before the FCC. – W. Havens.]

ATTACHMENT 5

ATTACHMENT 5



Technology Committee

Project Review

Tom Sorley, Chair
Andy Thiessen, Vice Chair

November 18, 2008

NPSTC is a federation of organizations whose mission is to improve public safety communications and interoperability through collaborative leadership.

Amateur Radio Working Group



- **White Paper** – Tom Abernethy
Develop white paper on how the amateur community can provide operational assistance and interface with public safety.
(Action Item #TC-039-20070925)
 - **Status 11/18/08:** Working group meetings were held on 11/17/08 and 11/18/08. All topical areas of the paper have been identified and are being further developed.
 - **Status 9/16/08 (notes from Seattle Meeting):** Mr. Abernethy reported that the Amateur Radio Working Group will present its white paper, which covers the beneficial interface between the amateur radio community and public safety, and addresses technical and operational issues, at the November meeting and encourages NPSTC Participant feedback.
 - **Next Steps:**

Broadband Working Group



- **Device Requirements – Andy Thiessen**
Begin process for finalization of device requirements for public safety. (Action Item #TC-044-20080212)
 - **Status 11/11/08:** 700 Mhz work is on hold pending results of D-Block auction. 4.9 Ghz work is on hold pending a P-34 user needs committee review of the P-34 Statement of Requirements.
 - **Status 9/9/08:** Regarding 4.9 GHz activities, the original P34 standards were written before the 700 MHz broadband was a possibility; given that, the APCO Project 25 Interface Committee (APIC) Broadband Task Group intends to host a user meeting to look at device requirements and move the analysis process forward. The P34 User Needs Committee will convene a meeting of users to review the requirements document and make any changes they deem necessary.
 - **Next Steps:** TBD

In-Building Working Group



- **NFPA Proposal** – Stu Overby
Track NFPA proposal on nationwide model codes and develop NPSTC comments for Board approval
(Action Item #TC-040-20080212)
 - **Status 11/11/08:** Propose to close this action item. The window of opportunity has passed on this item.
 - **Status 9/09/08:** Letter to NFPA on codes not completed. Material was circulated to EC, generating one specific comment from Haller, but letter not drafted yet. Intent of letter is to offer broad comment. Will send a letter anyway of support and interest. Daniel will provide POC, Overby bullet points. Siegel to draft letter.
 - **Next Steps:** Request permission from the Board to close this Action Item.

In-Building Working Group



- **In-Tunnel Supplement – Stu Overby**
Create an in-tunnel supplement best practices paper.
(Action Item #TC-046-20080408)
 - **Status 11/11/08:** During final drafting stage, identified some missing information and have made assignments to gather the necessary information to complete the draft.
 - **Status 9/16/08 (notes from Seattle Meeting):** The next steps will be to assemble the complete draft, review and edit the draft within the Technology Committee, distribute it to the Governing Board for review and approval, and place it on NPSTC's website. The Working Group will plan outreach efforts such as participation on panels and articles in 2009.
 - Mr. Haller said the FCC developed Part 15 Rules 20 years ago for in-tunnel radio so that signal is not lost in tunnels, suggesting that the Working Group research that information as well.
 - **Next Steps:** Complete the draft and begin the NPSTC review process by 12/31/2008.

Technology Education Working Group



- **Technology Knowledge Repository –**

Steve Devine

Tech Ed Develop process for document approval and updating NPSTC documents in technology knowledge repository (Action Item #TC-058-20080610)

- **Status 11/11/08:** NSO should finish review within next two weeks.
- **Status 9/16/08 (notes from Seattle Meeting):** Mr. Devine, reporting by teleconference, said the Working Group is in the final stages of review for the five initial products the group has produced, which will ultimately be placed on the technical education website. The first deliverables cover the following topics:
- **Next Steps:** Post five initial products on web site.

Technology Committee



- **TETRA Presentation** – Tom Sorley
 - **Status 11/11/08:** Presented two tables comparing Tetra and P25. Developed first draft of questions to be considered during this effort.
 - **Status 9/16/08 (notes from Seattle Meeting):** The target audience for this effort will be the practitioner community so the effort will be led by Mr. Devine and the Technology Education Working Group. To do this effectively it cannot be adversarial and as clean an apples to apples comparison as possible. Mr. Thiessen asked that participants from public safety and manufacturers should contact himself, Mr. Devine, Bob Shapiro, or Tom Sorley. No experts are needed; the most important contribution is what public safety would like to see compared.
 - The effort will begin with a table of contents on topics to be addressed in white paper, then the development of some scenarios where the two technologies might be deployed. Each standard works differently and the comparison must be sensitive to context. For example, the P25 team would select a scenario as would the TETRA team. Then each team would provide information on the deployment of their technology and develop an action item list for the other. The 'virtual' communities for coverage solutions to swap might include a rural and urban community for each team to highlight their solutions and then in the other's chosen virtual community. Mr. Devine solicited 25 FAQs on the two standards from participants at two levels, the decision maker level and one at a more technical level.
 - **Board Direction (Seattle Meeting Minutes):** Chief McEwen Harlin requested the Committee move forward in a limited manner at this time because it would be helpful to better understand the technologies in a primer or simple chart describing the technologies with this foundation. Based on the first brush efforts, the Governing Board can decide whether to move forward with the effort and to what depth.
 - **Next Steps:** Need participant feedback on draft and will then send to Tetra counterpart for further input. Once the framework is agreed upon, we will then forward to P25 group and Tetra Association for completion.

Summary Technology Committee

Action Item Status 11/18/08



WG	Issue	Action Item	Status
Amateur Radio`	White Paper –Operational Assistance and Interface	#TC-039-20070925	Open; action ongoing
Broadband	Finalization of device requirements	#TC-044-20080212	Open; On Hold
In-Building	NFPA Proposal	#TC-040-20080212	Open; Request to Close Action Item
In-Building	Create an in-tunnel supplement best practices paper.	#TC-046-20080408	Open; action ongoing
Tech Ed	Technology Knowledge Repository	#TC-058-20080610	Open; action ongoing
Committee	TETRA Presentation	#TC-059-20080610	Open; action ongoing

 = Board Action Needed

ATTACHMENT 6



NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL

**National Public Safety Telecommunications Council
Committee and Governing Board Meetings
February 11, 2009
By Teleconference**

Opening Remarks, Ralph Haller, Chair, NPSTC

Ralph Haller, Chair, NPSTC, welcomed NPSTC's Governing Board Members and Participants to the quarterly Governing Board meeting held by teleconference on February 11, 2009. Mr. Haller welcomed special guests, Kathleen Higgins, Office of Interoperability and Compatibility (OIC), Department of Homeland Security (DHS); Chris Essid, Office of Emergency Communications (OEC); and Jeff Cohen, Senior Legal Counsel to the Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (FCC). Mr. Haller also welcomed new Governing Board representatives, Jack Doane, the new alternate representing the National Association of State Technology Directors (NASTD), and Mike Lokatis, representing the National Association of State Chief Information Officers (NASCIO).

Following the roll call, which confirmed a quorum was present, Mr. Haller called for a motion to approve the agenda. Paul Leary, Forestry Conservation Communications Association (FCCA), moved to approve the agenda; Dennis Dura, Amateur Radio Relay League (ARRL) seconded. Approved.

Regulatory Update, Jeff Cohen Senior Legal Counsel to the Bureau Chief, Public Safety and Homeland Security Bureau (PSHSB), Federal Communications Commission (FCC)

Mr. Cohen reported on the changes at the Commission that have occurred during the transition to the new administration. Former Bureau Chief, Derek Poarch has resigned as Chief at the PSHSB and will be missed, he said, but at the same time, Mr. Cohen said, the Bureau was very pleased to welcome David Furth as acting Bureau Chief. Erika Olsen has returned to her role as Deputy Bureau Chief. Mr. Cohen provided updates on the following ongoing activities.

700 MHz—The Digital Television (DTV) transition is the primary focus of Acting Chairman Michael Copps and the Commission. The Commission is using this extra time to brainstorm preparations for next steps in the transition. Mr. Cohen is representing Mr. Furth on the Commission's DTV Task Force and said most of the issues under discussion don't concern public safety. They are aware that a few agencies were planning to deploy in 700 MHz on February 17, but they are not aware of any serious problems at the present time. Mr. Cohen said a related issue involves television stations that do plan to end analog operations on February 17. The FCC is concerned that this action might trigger 911 calls from citizens who aren't aware the analog stations are going off the air.

The Commission must also address the February 17, 2009 deadline mandated by the Second Report and Order (R&O) requiring that licensees who deployed narrowband 700 MHz systems under the previous band plan complete relocation to the revised 700 MHz band plan. This requirement was adopted contingent on a successful D Block auction, a rebanding plan, and a funding mechanism to

American Association of State Highway and Transportation Officials | American Radio Relay League | Association of Fish and Wildlife Agencies | Association of Public-Safety Communications Officials – International | Forestry Conservation Communications Association | International Association of Chiefs of Police | International Association of Emergency Managers | International Association of Fire Chiefs | International Municipal Signal Association | National Association of State Chief Information Officers | National Association of State Emergency Medical Services Officials | National Association of State Foresters | National Association of State Technology Directors | National Sheriffs' Association

fund the cost. Since these events have not occurred, the Bureau has let the FCC Acting Chairman know that the requirement must be stayed.

700 MHz Regional Plans—There are 30 plans, amendments, or revised plans on file, with 13 approved, 4 put on Public Notice (PN) for comment, with the comment period ending on February 17; 3 approved for placement on PN, and 3 additional PNs in the hopper at the FCC.

800 MHz Rebanding—Mr. Cohen said he will be playing a more active oversight role of 800 MHz than previously. All major players are reporting progress. Sprint/Nextel has started to release spectrum which the Commission will make available on a quarterly basis. The Commission commends all licensee efforts. The FCC has issued two PNs; one provides guidance to licensees on procedures for permanent licensing of 800 MHz facilities on the post-rebanding channels that were previously authorized on pre-rebanding channels by Special Temporary Authority (STA). The other PN provides guidance on procedures for permanent licensing on 800 MHz channels that were operating under regular authorizations. On the Canadian border, negotiations have resulted in agreement to modify the existing 800 MHz arrangement to reflect the reconfigured U.S. band plan. The Transition Administrator (TA) has established a 30-month transition plan. Continued discussions are occurring with Mexico, which is more complicated because the two countries will have to alternate the current distribution of primary spectrum and some agencies in Mexico may have to relocate. Discussions will continue in March.

E911—An order concerning proposals from the Association of Public-Safety Communications Officials – International (APCO), the National Emergency Number Association (NENA), AT&T, Verizon, and Sprint regarding the adoption of county-level location requirements for 911, on circulation before Chairman Martin departed, remains on circulation. Because of the NET 911 Act, the Commission is required to report on the state collection of 911 and E911 fees and charges. The FCC released a PN seeking this information from the states.

Waiver Requests—The FCC has a number of waiver requests pending; some are quite complicated and require continued interaction between the FCC and applicants.

4.9 GHz—Before Chairman Martin left, the Bureau circulated an order addressing a petition for clarification filed by MA-COM, which the former Chairman removed from consideration before he left. The Commission is deciding how to proceed on this issue with the new administration.

Traveler's Information Service (TIS)—The Commission has received a waiver request from Howard County, Maryland, concerning technical issues on the TIS. There are also two TIS-related petitions seeking a ruling about the scope of permissible content. One asks about the routine transmission of information like NOAA weather information, while the other petition seeks a broader expansion and application of content rules.

Tom Sorley, Chair, Technology Committee, inquired about the timeframe for an FCC decision on 800 MHz rebanding appeals regarding an ability to reach agreement on disputes. Mr. Cohen said the FCC has delegated the authority to resolve disputes. Eight are pending; the Bureau is finalizing orders on all of those.

Stu Overby, Vice Chair, Spectrum Management Committee, asked about the status of the pending proposed rulemaking regarding wireless mics in 700 MHz. Mr. Cohen said that remains on circulation as well. The Bureau is working with the Wireless Bureau and the Office of Engineering and Technology (OET), revisiting what has been circulated and vetting the issue with the acting Chairman's Office.

John Powell, Chair, Interoperability Committee, asked when action on the NPTSC petition on the 700 MHz band might be expected. Mr. Cohen said he did not know, but the issue has increased priority now.

Office of Interoperability & Compatibility (OIC), Kathleen Higgins

Ms. Higgins briefed on some of the priority programs at OIC.

National Information Exchange Model (NIEM)—NIEM develops and disseminates standards and processes that improve information sharing among many government and public entities including the justice, public safety, emergency and disaster management, intelligence, and homeland security communities. OIC's Common Alerting Protocol (CAP) and Emergency Data Exchange Language (EDXL) Distribution Element (DE) standards were recently added to NIEM's format for standards and processes. NIEM's inclusion of the CAP and DE standards will effectively reduce the time and resources required for emergency responders to exchange information.

Multi-Band Radio Acceptance Testing—On January 12, representatives from OIC and the Institute for Telecommunication Sciences (ITS) attended the critical design review, demonstration, and acceptance testing of the multi-band radio prototype at Thales, Inc. The acceptance testing ensures that the multi-band radio has basic functionality, interoperability, and compatibility. In the next phase, the radio will be delivered to various sites for additional laboratory and operational testing and evaluation. Radio testing will occur across multiple bands and modes, systems, and agencies. Six organizations will participate in the testing, including ITS, Port Authority of New York and New Jersey, Fire Department of New York, New York Police Department, National Interagency Fire Center, and the Boise Fire Department.

Hospital Availability Exchange Language (HAVE) and Resource Messaging (RM) Standards—In late 2008, OIC debuted two new EDXL standards, HAVE and RM. The Organization for the Advancement of Structured Information Standards (OASIS) introduced HAVE and RM into its suite of standards in November 2008. These are now standards that may be used and implemented worldwide, creating a unified and uniform approach to emergency response communications. OASIS has a constituency of over 5,000 participants from 600 organizations situated in over 100 countries around the globe.

The HAVE standard allows emergency responders to exchange information regarding the status of hospital resources—including bed availability, available services, capacity, and other key operational elements of the hospital. Emergency responders can access this information in the field and from emergency operation centers. RM transforms resource sharing into a more organized process by providing a set of standard information formats allowing emergency responders to request response teams, assets, or other resources for use in incident responses.

Project 25 Inter-RF Subsystem Interface (ISSI) Test Tool (ITT)—The P25 ISSI ITT recently won the Department of Commerce's Gold Medal Award for Scientific/Engineering Achievement. The ITT team received recognition for exceptional ingenuity in identifying, developing, and promoting a technical solution that enables industry members to implement new interoperable communication standards. The ITT, an open-source software tool, will accelerate the development of P25 standards and the integration of non-proprietary systems, and is essential in the testing of emergency response and public safety radio interfaces.

Commercial Mobile Alert System (CMAS)—OIC is currently working on an early warning system that will have the capability to provide the public with national emergency alerts via certain mobile devices. Congress established CMAS through the Warning, Alert, and Response Network (WARN) Act. Designed to ensure that a warning is received in advance of disasters, CMAS will serve as one piece of

a comprehensive, national alert and warning system and will support innovative technologies that effectively transmit geographically-targeted emergency alerts to the public via their mobile devices.

Kevin McGinnis, National Association of State Emergency Medical Services Officials (NASEMSO), commented that he has worked on NIEM to integrate EMS, fire, etc. with what has essentially been a justice-focused process. He said there has not been much coordination in the last year or two with communities other than in the justice area. Subsequently there have been other efforts from APCO and IJIS on an effort called the Public Safety Data Information Project, and from the Department of Health and Human Services working on hospital and pre-hospital data messaging doing other work. He is concerned that there could be a conflict among the different efforts.

Ms. Higgins said she would like to meet with other interested stakeholders to develop an approach to assemble the right players to discuss this. Mr. Powell said the GLOBAL Wireless Security Meeting had a meeting last week that also determined that it is a priority to include other public safety players in this process. Mr. Doane said he has some experience with GJXDEM and NIEM and also volunteered to work with Ms. Higgins.

Office of Emergency Communications (OEC), Chris Essid

Mr. Essid provided an update on activities at OEC.

Communications Unit Leader (COML) Training—Since the national rollout in August 2008, OEC has conducted 20 All Hazards courses, with 500 participants successfully completing the course. There are 12 additional classes scheduled between now and April 2009. When a serious ice storm hit Kentucky following the January class in that area, the new COMLs were able to put their training to work immediately. The COML Working Group finalized the Train the Trainer Course, to be available in the spring, and is also working on a communications unit awareness course that will be available online eventually.

The Statewide Communications Interoperability Plan (SCIP) workshops are providing support to states and territories to help them develop and align their plans with the National Emergency Communications Plan (NECP). Forty-eight states have signed up and 16 workshops have been completed. The outcomes of the workshops have included action plans to prioritize SCIP initiatives, priority lists of desired technical assistance needs, action plans to create working groups for sustainable funding, and strategic roadmaps. Different states have different outcomes depending on their greatest needs, but all show real progress. The workshops have been very productive and well received.

OEC continues to provide technical assistance, much focused on governance, technology and engineering, SOPs, and training and exercises. In response to its most recent solicitation, OEC received 218 requests for TA from 50 states and territories. In one case, OEC is helping one state to develop governance and an SOP support structure. The TA team will provide information on different governance structures, decisionmaking models, best practices, and an assessment of the state's current procedures to assist in streamlining incidence response. OEC will also focus support to the Urban Areas to help them respond to Goal 1 of the NECP, to demonstrate response-level emergency communications in the Urban Areas.

OEC is looking forward to working with the Canadian Interoperability Technology Interest Group (CITIG) on an Interoperability Forum to be held May 13-15 in Niagara Falls, New York.

Canadian Interoperability Technology Interest Group (CITIG), Lance Valcour

Mr. Valcour reported that CITIG currently has 350 members. The organization intends to build a structure for CITIG that is more like NPSTC's with organizations acting as the voting members in the future. CITIG's organizations have developed a joint resolution asking the government of Canada to make interoperability a priority. CITIG continues to hold regional meetings, with the next meeting to be held in Victoria next week. The regional meetings always include an invitation to a representative from the U.S., typically a statewide interoperability planning member. CITIG works closely with OEC, Standards and Technology (S&T), the National Institute of Justice (NIJ), and NSPTC, and has discussed bringing the OEC COML program to Canada. The NECP for Canada is very similar to the NECP developed by OEC.

CITIG has expanded its collaboration to the United Kingdom. The UK is working on "plain speak," consistent with the Canadian and U.S. plain language efforts. There are excellent synergies between the nations that enhance sharing strategies and resources or "borrowing with pride." CITIG has also started working with Australia recently.

Outreach Committee, Bill Brownlow, Chair, and Charley Bryson, Vice Chair

Mr. Brownlow reported that one of the action items from the November meeting was to help publicize the goals of the National Unified Goals (NUG) developed by the National Traffic Incident Management system. One of the goals is to encourage the use of plain language on the radio for incident management. Mr. Brownlow has initiated contact with two representatives to learn how NPSTC can assist.

Mr. Brownlow also received notice regarding the development of a potential Working Group through IEEE on WiMAX for public safety. Harlin McEwen, International Association of Chiefs of Police (IACP), cautioned against using unlicensed spectrum for public safety purposes. Mr. Brownlow said this is an ad hoc discussion at this point.

Regional and Broadband Liaison Committee, Don Root, Chair, and Ron Mayworm, Vice Chair

Itinerant Channel Naming Working Group, John Powell

Mr. Powell reported that there have been a number of exchanges in this Working Group among agencies that are considering implementing. The Working Group is trying to ensure that the naming used for itinerant channels is differentiated from the names of the interoperability channels.

Public Safety Spectrum Trust (PSST) Update, Chief McEwen

Chief McEwen provided an update on the PSST. The PSST expected that Chairman Martin would circulate a 3rd Further Report and Order (R&O) before he left the FCC, but that did not happen. The PSST has been told that the staff of the Wireless Bureau, PSHSB, and OET has worked to prepare a draft but it has not been seen by the other commissioners. Acting Chairman Copps is directing his attention to the DTV issues and is not willing to meet with the PSST until those issues are sorted out. The PSST has the sense that Chairman Copps seems to be open to keeping the process moving forward and that he would like to get more done on a proposed order for a new incoming Chairman, who has yet to be nominated. The PSST continues to have a lot of interest from prospective bidders and the prospect of an auction is still alive.

Chief McEwen said the PSST is trying to take advantage of the economic stimulus package and that, as Chairman, he wrote to President-elect Obama regarding a Verizon proposal to the southern governors that stated they could build out a public safety network for \$13 billion to include rural areas and some of the original more stringent requirements the PSST had established. The PSST asked for \$15 billion for a public safety broadband network. The funding would go to a trust fund for

administration by an entity such as the National Telecommunications and Information Administration (NTIA) that would go to bidders for the build out of the public safety portion of the network. Depending on the language of the final stimulus package, there could be the ability to apply for some funding to support the PSST. Regarding the narrowbanding relocation required in 700 MHz, the PSST has no money to administer that relocation and the issue is still undecided at the FCC.

The PSST will hold its first public meeting on March 25, 2009, from 9 a.m. to 3 p.m. in the FCC's meeting room.

Regulatory Update, Bette Rinehart

800 MHz: Ms. Rinehart reported that band plans remains unresolved on the Mexican border with negotiations for Wave 4 incumbents extended until April 1, 2009, and the freeze extended until May 13, 2009. The FCC began accepting applications for the first 20 Nextel-vacated frequencies on January 28, 2009. The FCC just released a PN on procedures for modifying National Public Safety Planning Advisory Committee (NPSPAC) plans in the non-border areas in rebanding Waves 1-3.

As reported by Mr. Cohen, there are two plan amendment procedures. For amendments that are rebanding related only (shifting frequencies down 15 MHz) no adjacent region concurrence is required; amendments must be filed by April 13, 2009, and there will be an expedited FCC review, with no requirement for issuing a PN. For Regional Planning Committees (RPCs) requesting additional amendments to the plan such as changing frequency allocations/allotments, technical parameters, or application filing procedures, adjacent region concurrence is required and the RPC must notify the FCC by April 13 that it plans to file a full amendment and file that amendment by June 10. These types of amendments will follow the normal FCC review process. All amendments must include a cover letter signed by the RPC Chair and referencing the original docket number.

700 MHz: On February 4, Congress passed a bill to extend the DTV transition deadline from February 17 to June 12, 2009; however, many stations have already moved. As of February 2, 2009, of the 66 TV/DTV transmitters in the U.S. affecting public safety spectrum, 6 stations are already "silent." At least one other station is operating at reduced ERP and six more stations filed applications to go silent on February 17, 2009.

700 MHz Regional Plans: Three 700 MHz regional plans have been approved since the November meeting: Region 1 (Alabama), Region 7 (Colorado), and Region 51 (Texas-Houston). There are 17 plans pending; 6 filed since November, Region 54 (Chicago area), Region 33 (Ohio), Region 6 (Northern California), Region 10 (Georgia), Region 13 (Illinois), and Region 28 (East Pennsylvania/Southern New Jersey).

National Regional Planning Council (NRPC) Update, Richard Reynolds

Mr. Reynolds reported that the NRPC is currently holding a 2-day training session in Orlando, Florida, with beginner and advanced refresher courses on the Computer Assisted Pre-coordination and Resource Database System (CAPRAD). There are workshops for those regions that are almost done with plans that will provide assistance towards completion. The 800 MHz RPCs are also meeting in Orlando through APCO support. APCO has been awarded the NIJ grant to support the NRPC in the future, and it is hoped that the new grant will combine funding for both 700 MHz and 800 MHz RPCs in one group.

Spectrum Management Committee, David Buchanan, Chair, and Stu Overby, Vice Chair

Airborne Video Working Group, Dave Buchanan, Chair

Mr. Buchanan said the Working Group plans a survey of agencies that are using airborne video, inquiring about their successes and problems. Most agencies use media spectrum for airborne video. The Working Group also wants to assess whether agencies are using 4.9 GHz for airborne operations under waivers .

Wireless Alerting Working Group, Jim Weichman, Chair

Mr. Buchanan said the Working Group continues to draft a Petition for Rulemaking (PFR) asking the FCC to audit the two-way paging channels for usage, and, if there is un-used spectrum, to allocate it to public safety for paging. The Working Group is documenting the needs and hopes to have a draft PFR by the March meeting.

470-512 MHz Working Group, Ralph Haller, Chair

Mr. Haller reported that the Working Group has developed a draft PFR that has been circulated to the Governing Board for a vote. For the protection of digital television standards, the PFR proposes that the FCC adopt the same protection standards for the 470-512 MHz T band (channels 14-20) as it adopted at 700 MHz. The changes to rules on the T-band would expand the maximum area where land mobile is allowed from 50 miles from center city coordinates to approximately 80 miles. It would propose that different protection standards be put in place for the continued protection of analog stations at 40 db co-channel protection instead of 50 db.

Earlier protection was based strictly on mileage and required filing of waivers. The rules are obsolete and extremely conservative. The Commission faced a similar problem when it opened 700 MHz and it then adopted rules for protection of DTV stations, relaxing the analog protection to a 40 db contour instead of 50 db. Under those rules, an agency could introduce a separate showing that demonstrates the contour is protected without filing for a waiver or acquiring a letter of concurrence from the TV station. The PFR recommends those rules from 700 MHz band. There have been many waivers issued in the New Jersey and New York area to use T-band channels outside the 50 mile radius, where they have a secondary status. By increasing the by-rule distance to 80 miles, this would provide these agencies primary status, according them additional protection from new stations that might come on the air in the future.

Action Item: Mr. Haller recommended that the Governing Board vote on the PFR and move that it be filed with the FCC, asking that the Vice Chair host the vote as Mr. Haller was a primary author of the PFR. Doug Aiken, Vice Chair, NPSTC, called for a motion. Chief Leary so moved; Mr. Brownlow seconded. Approved.

Mr. Overby thanked David Eierman for his effort on the petition. Mr. Haller also recognized Mr. Eierman and Mr. Overby's hard work. Mr. Haller recommended that once filed, NPSTC should make an explanatory presentation to the Wireless Bureau, OET, and the Media Bureau at the FCC to educate them on the issue.

700 MHz Advocacy Working Group, Stu Overby, Chair

Mr. Overby reported on the DTV delay and the wireless microphone issue. Mr. Overby thanked Chief McEwen, Alan Caldwell, International Association of Fire Chiefs (IAFC), and Bob Gurss, APCO, for their advocacy for public safety regarding the DTV delay.

Technology Committee, Tom Sorley, Chair, and Andy Thiessen, Vice Chair

Mr. Sorley reported that much of the Committee work has been postponed by lack of movement on 700 MHz issues. At the last Governing Board meeting, there were discussions regarding the P25 and

[There is no public evidence that the TETRA Association attempted to seriously pursue this. On the other hand, there also is no evidence that the P25 or NPSTC community tried much, either. The primary "resources" needed exist: both P25 and TETRA are well known technically, and there are RF prediction tools, and other ready means for a meaningful comparison. The P25 community, and the TETRA Association (and to a large degree NPSTC also) are in large part controlled by Motorola, which is the direct cause of blocking TETRA in the US, to sell P15 and other tech that does less for more money. - W. Havens for Skybridge Spectrum Foundation & others]

TETRA comparisons. Mr. Sorley submitted the recommendations, comparisons, and scope of the project to both P25 and TETRA, but **representatives of TETRA** indicated that the scope was too broad and representatives from P25 said the group does not have the resources to follow up on the comparison at this time. As discussed previously, NPSTC **does not have the resources** to pursue this either. Mr. Powell reported that the P25 Steering Committee also felt that the scope was very large and current priorities didn't allow time to address it now.

Action Item: Mr. Sorley asked the Governing Board to close the action item to provide a comparison between P25 and TETRA. Chief Leary so moved; Mr. Reynolds seconded. Approved.

In-Building Working Group, Stu Overby, Chair, and Jack Daniel, Vice Chair

Mr. Overby reported that contributions from members of the Working Group on the Best Practices for In-Tunnel Communications have all been received. The white paper was requested as a supplement to the original In-Building Best Practices White Paper. He is assembling the draft that should be circulated at the March meeting.

Technology Education Working Group, Robert Shapiro, Chair, and Steve Devine, Vice Chair

Mr. Shapiro reported that the five initial products the Working Group planned are complete and will be live on the NPSTC website shortly. The group is ready to deliver more articles, slides, and information, and is seeking input on education areas of interest for white papers and presentations in 2009.

Interoperability Committee, John Powell, Chair, Pam Montanari, Vice Chair

Mr. Powell introduced the new Interoperability Vice Chair, Pam Montanari. See her biography at www.npstc.org.

Interoperability Channel Naming Working Group, Don Root, Chair

Mr. Powell updated the group on the status of the American National Standards Institute (ANSI) accreditation process of *NPSTC's Common Channel Naming Report*. There are two parts to the ANSI standard—the first part is the normative part, which defines the standard and how it was developed, and the second, the informative part, has supporting information and describes how the standard would be implemented. Changes referring to the A and the B Block will have to be made eventually, but these changes will be able to be made quickly once they are approved by ANSI. Mr. Powell is hopeful that the final document will be ready in as soon as 6 weeks.

SDR Working Group, John Powell, Chair

Mr. Powell reported that the SDR Forum meets quarterly, with the last meeting held in San Diego, California, and jointly supported with the Joint Tactical Radio System (JTRS) Program. Decreased travel funding is an issue for the SDR Forum and they are meeting by teleconference currently.

ESF2 Working Group, Don Root, Chair

Mr. Powell reported on NPSTC's effort to provide feedback on the Federal Emergency Management Agency (FEMA's) new Communications Annex and to provide input on appropriate participation on the Regional Emergency Communications Coordination (RECC) Working Groups. NPSTC advised FEMA of the need to focus more on local coordination rather than at the state level in developing the RECCWGs. Recent changes of administration at FEMA have slowed this effort currently.

Charles Hoffman, FEMA, said he would like to seek NPSTC's assistance to coordinate development of local POCs and encourage more involvement with the RECCWGs. Ms. Ward said that access to the

National Interoperability Information Exchange (NIIX) for the secure exchange and storage of documents had been offered to FEMA but NPSTC hasn't heard back from them. Mr. Hoffman said that regional offices are linked to the FEMA network and there are IT security rules that will probably discourage the interface of NIIX at this time. Mr. Powell said that NIIX doesn't link to other websites as it is a document repository. Mr. Hoffman said the regions can use NIIX independent of the FEMA network.

Project MESA Working Group, John Powell, Chair

NPSTC will not participate directly as it has in the past, but continue to monitor Project MESA meeting activities to follow progress on this international standards effort.

COML Update

Mr. Powell provided a review of how the role of COML developed from a wildland fire incident function to an all-hazards communications leader training. The Interagency Board (IAB) Communications Committee was a big driver in expansion of the role, which got initial funding from OIC to develop the curriculum now offered today. OEC assumed funding to continue the development of the COML training and to offer that training across the country. Student prerequisites and course descriptions are available at www.npstc.org.

Chief Leary asked if there is a bridge course that would allow OEC to certify the National Wildfire Coordination Group (NWCG) COML course. Mr. Powell said the forestry community has been reluctant to make modifications to their course that would make that bridge more possible. During the Colorado fires, NWCG sent COMLs to assist who were trained only in conventional systems in UHF and VHF while the systems they needed to interface with were 800 MHz trunked systems.

GLOBAL Update

Mr. Powell reported that he had attended the Security Working Group of GLOBAL [Global Justice Information Sharing Initiative] last week. As noted earlier, the group felt that the JDXN information exchange and focus on justice and law enforcement needed to expand to other communities in fire, EMS, transportation, and hospitals.

Mr. Powell would like to send a list of all NPSTC Governing Board member names and send it to GLOBAL as possible sources of feedback from the broader public safety community. Chief McEwen said he serves on the GLOBAL Executive Steering Committee and added that he has long urged GLOBAL to expand to a greater community but funding has been an issue.

Governing Board General Business

Government Accountability Office (GAO) Study

Ms. Ward provided a GAO Emergency Communications Follow-Up Study to the Governing Board. Last year the GAO interviewed several members of NPSTC for a report they are doing on the federal response to local and state interoperable communications. They have asked some follow-up questions and since NPSTC has been heavily involved in facilitating and advocating for the advancement of Public Safety Wireless Advisory Committee (PSWAC) and the National Public Safety Coordination Committee (NCC) recommendations GAO requested that the NPSTC Governing Board and Committees prepare a response to the questions posed below.

- Are there any particular recommendations that NPSTC considers the most important or key for addressing emergency communications vulnerabilities? a. If yes, which ones and why?

- To what extent have FCC, DHS, and other relevant federal agencies adopted or responded to the recommendations of the PSWAC and the NCC? a. What, if any, action remains outstanding for each recommendation?
- Would there be any value (i.e. effectiveness, accountability, transparency) in FCC, DHS, or other federal agencies tracking advisory groups' recommendations and each agencies' response to these recommendations?
- What are the key challenges that NPSTC has faced in advancing the recommendations of these two advisory groups?
- Would it be possible to get a copy of the NCC's final report(s)?

Discussion: There was general discussion on key recommendations for vulnerabilities such as proper system design up front, i.e., towers that can withstand winds and back-up power; and the need to supplement with deployables when everything fails. Also noted was the need for adequate spectrum, a nationwide broadband network, and backhaul issues. Mr. Haller added that underlying all these needs is the lack of funding for hardening, building the network, etc. To accomplish these tasks, public safety requires a relatively small amount of funding. It was agreed that the questions required some thought and that the response should include a request for funding as part of the stimulus package.

Action Item: Assemble a writing group to develop a more thoughtful response to the GAO questions. Mr. Buchan, Mr. Caldwell, and Mr. Overby will work with Ms. Ward. Chief McEwen and Mr. Powell volunteered to review the response. The group will discuss the questions by teleconference next week.

IWCE Meeting

Mr. Haller announced that NPSTC will hold an informal meeting on Friday, March 20 from 1-5 p.m., in Room 219 at the International Wireless Communications Expo (IWCE). This is an opportunity for interested persons to meet and greet NPSTC's Governing Board and learn about NPSTC, and will also be a brainstorming session for those assembled. There will be NIIX training offered in Room 219 from 11 a.m. until noon.

Executive Task Force Progress Report, Lloyd Mitchell, Task Force Chair

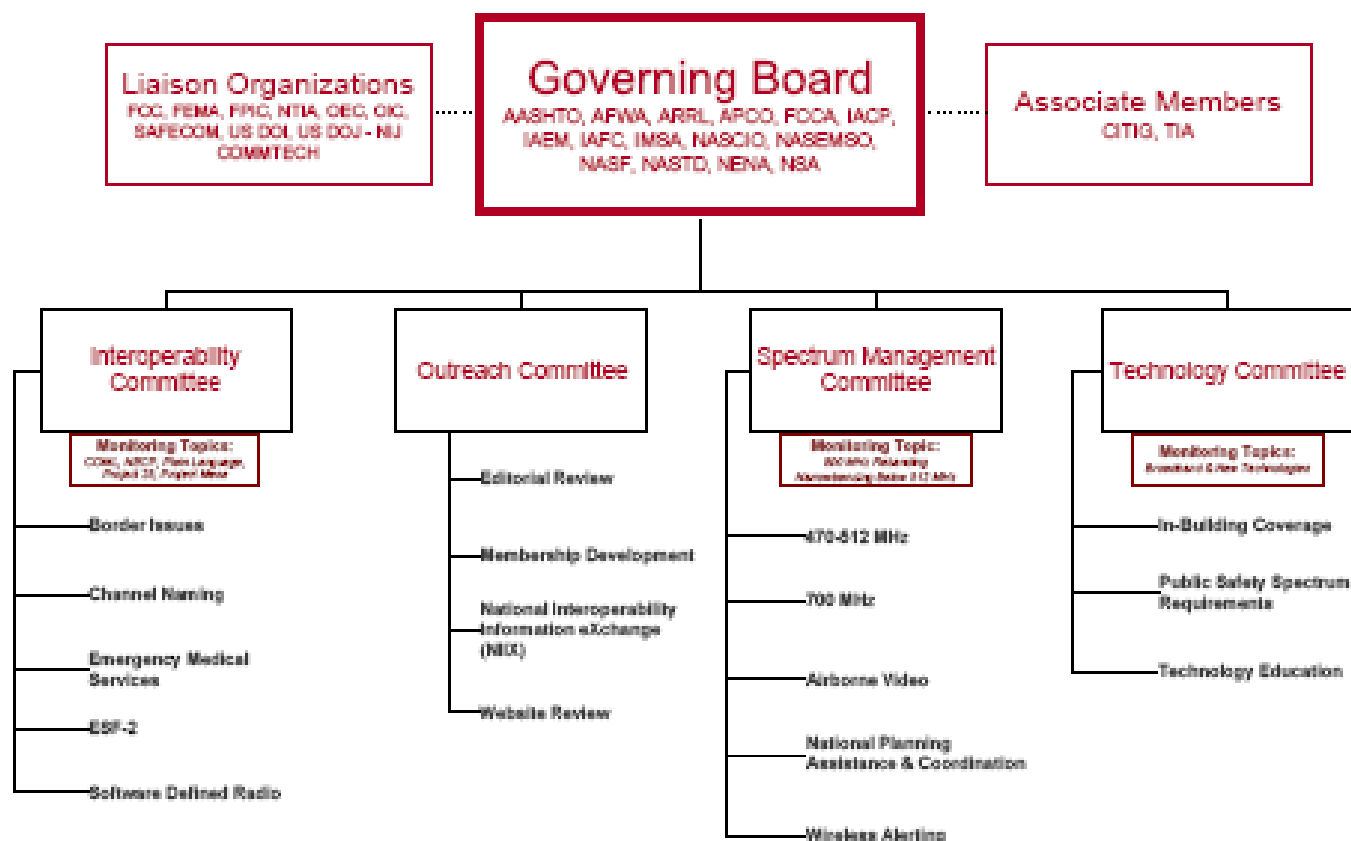
Mr. Mitchell presented the findings and recommendations of the NPSTC executive task force, created at the November 2008 Governing Board meeting to review NPSTC's mission and goals, the structure of the organization, support levels, meeting scope and meeting frequency, project priorities and resource requirements, and support options. The task force began meeting every Wednesday morning by teleconference on January 14, 2009. The task force consists of the following members: Mr. Mitchell; Mr. Sorley; Bob Speidel, Telecommunications Industry Association (TIA); Paul Szoc, International Municipal Signal Association (IMSA); Ms. Ward; Mr. Haller, ex officio; Doug Aiken, NPSTC Vice Chair, ex officio; and Mr. Valcour, observer.

Committees and Working Groups: The goal for the first meeting was to review the Committees and Working Groups and determine whether they should be retained or dissolved, based on whether the Working Group would have an expected deliverable to be presented to the Governing Board and whether NPSTC should be using its limited resources for that particular Working Group. Following the task force's thorough review and discussion of each Working Group and Committee, the Committee Chairs were invited to the second teleconference to share their thoughts on the missions and deliverables of each Committee's Working Groups.

There was consensus that Working Groups that may be suspended and monitored and be reconstituted if the need arises later. For Working Groups that are dissolved, the task force recommended that Committee Chairs continue to monitor their particular issues and provide unbiased information on subjects such as Software Defined Radio or Project MESA activities to the Governing Board and NPSTC Participants. Following analysis and discussion, the task force reworked the organization chart.

Governing Board Priorities: The task force next addressed the NPSTC priorities identified by the Governing Board at the September meeting, discussing how to rank them by importance, and how much support would be needed to respond to each priority. The top priorities for 2009 were identified as:

- Border issues
- Spectrum for public safety assessment
- Outreach to public through appointed and elected officials
- 700 MHz broadband
- Narrowbanding
- T-Band [470-512 MHz] rule changes



Narrowbanding is mandated by the FCC. Additionally the Working Group addressing the T-band issues has a PFR that is ready to file and NPSTC will need to work with the FCC to move NPSTC's recommendations forward..

There was consensus that OIC has a legislative mandate to improve public safety through a comprehensive research, development, testing, and evaluation program for improving interoperable emergency communications and to evaluate and assess new technology in real world environments. As such NPSTC has been a critical component of their ongoing effort to identify gaps and focus research efforts to fill these gaps. For example, OIC is currently working with the public safety community to help develop a multi band radio designed to improve interoperability between first responders. It was agreed that the long standing relationship between NPSTC and OIC be both encouraged and strengthened. Another area of specific interest is the way that the Office of Standards and Technology could facilitate improved interoperability along the northern border between Canada and the United States. As the longest unprotected border in the world, the need to leverage technology, spectrum, and interoperability efforts runs across all aspects of NPSTC's proposed new structure, as well as that of both OIC and OEC.

There was consensus that the OEC has a legislative mandate to implement the NECP, an issue that affects operational issues nationwide. There was also a discussion of the priority to provide outreach to the public through appointed and elected officials. It was agreed that the task force should ask the Governing Board to provide a better definition of outreach and the associated deliverable.

Conclusion: To conserve resources, the task force requests that the Governing Board adopt these recommendations at the February meeting and they are implemented immediately so that staff resources can be adopted to support the recommendations. The task force has addressed immediate recommendations for the upcoming year's support. They will be moving into a future look at what is needed and methods to support NPSTC activities. The next report will be provided to the Governing Board at the June meeting in Washington, D.C.

Discussion

Mr. Mitchell said the new organization chart will indicate that NPSTC is still monitoring many other important issues such as 700 MHz broadband. Mr. Overby suggested that the second priority, "PSWAC spectrum requirements" be broadened to "spectrum requirements" with the action item to review PSWAC.

Action Item: Change the priority "PSWAC spectrum requirements" to "spectrum requirements."

Action Item: Add sixth priority, "NPSTC supports all 700 MHz initiatives, narrowband voice and broadband. Change the Working Group, 700 MHz Advocacy, to 700 MHz Working Group. NPSTC 700 Narrowband relocation and 700 broadband activities will now be included under the 700 MHz Working Group.

Mr. Powell said he did not think that the issue of SDR should be moved to monitor mode as it is very active right now, particularly in light of OIC interest and the development of the multi-band radio.

Action Item: Add the SDR Working Group back to the organization chart. Mr. Powell will report monthly on SDR activities for the OIC report.

Action Item: Change wording from "dissolve" Working Group to "suspend."

Action Item: Mr. Reynolds moved to accept the recommendations of the executive task force, with the above noted changes; Chief Leary seconded. Approved.

Meeting Adjourned

Mr. Haller asked for feedback via email on how well the teleconference worked to inform planning for similar meetings. Mr. Overby thanked Mr. Mitchell and the task force for their hard work. Chief Leary moved to adjourn the meeting; Chief Aiken seconded. The meeting was adjourned at 5:00 p.m. EST.

Meeting Attendees

Doug Aiken International Municipal Signal Association	Jackie Bayless NPSTC Support Office	William Brownlow American Association of State Highway & Transportation Officials
David Buchanan Spectrum Management Committee Chair	Chris Butts NPSTC Support Office	Alan Caldwell International Association of Fire Chiefs
Willis Carter Association of Public Safety Communications Officials	Jeff Cohen Federal Communications Commission (FCC)	Jack Doane National Association of State Technology Directors
Dennis Dura American Radio Relay League	Jeanne Elder NPSTC Support Office	Chris Essid Office of Emergency Communications (OEC)
Ralph Haller NPSTC Chair	Kathy Higgins Office of Interoperability & Compatibility (OIC)	Charles Hoffman Federal Emergency Management Agency
Michael Hutton Association of Fish & Wildlife Agencies	Paul Leary Forestry Conservation Communications Association	Chris Lewis U S Department of the Interior
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Lloyd Mitchell National Association of State Foresters	Mike Mitkus NLECTC Communications Technologies Center of Excellence	Pam Montanari Interoperability Committee - Vice Chair
Larry Nyberg Telecommunications Industry Association	Stu Overby Spectrum Management Committee Vice Chair	John Powell Interoperability Committee Chair
Paul Szoc International Municipal Signal Association	Lance Valcour Canadian Interoperability Technology Interest Group	Marilyn Ward NPSTC Executive Director